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Supreme Court, U.S.
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No. _____

In The

Supreme Court of the United States

October Term, 1995

DANIEL IMMEDIATO; DIANE IMMEDIATO; AND EUGENE IMMEDIATO,

Petitioners,

v.

RYE NECK SCHOOL DISTRICT; KATHLEEN D. GULOTTA; FRANK SPEDAFINO; BEATRICE CERASOLI; ALAN MANOCHERIAN; JANICE K. ANDERSON; LIZ PERELSTEIN; PETER J. MUSTICH,

Respondents.

Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

The United States Court of Appeals for the Second Circuit held that a public school district can require students as a condition of high school graduation to perform service to non-profit organizations and agencies in the manner prescribed by school officials without violating the rights of either parents or students. The questions presented for review are:

(1) Did the Second Circuit err in holding the Fourteenth Amendment right of parents to direct their children's education as non-fundamental and in subjecting the school district's mandatory community service program to rational basis review?

(2) Did the Second Circuit err in holding that the decision to perform charitable service to others is not protected by the Fourteenth Amendment's personal liberty guarantee and that the government therefore legally may impose a duty on individuals to serve others?

PARTIES TO THE PROCEEDINGS

In addition to the parties named in the caption, Mario Gironda, Jr., and his parents, Mario and Sandra Gironda, were plaintiffs in the original proceeding in district court. Through mutual stipulation, they withdrew from the case before judgment was entered by the district court.

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OPINIONS BELOW

The opinion of the United States Court of Appeals for the Second Circuit is reported at 73 F.3d 454 (2d Cir. 1996), and is reprinted in the Appendix. A-1-21. The opinion of the United States District Court for the Southern District of New York is reported at 873 F. Supp. 846 (S.D.N.Y. 1995), and is reproduced in the Appendix. A-24-41.

JURISDICTION

The decision of the United States Court of Appeals for the Second Circuit was entered on January 2, 1996. The Order of the Second Circuit denying reconsideration and rejecting the suggestion for rehearing in banc was entered on February 15, 1996. A-22-23.

This Court has jurisdiction to review the judgment of the Second Circuit under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS

United States Constitution, amendment XIV

SECTION 1. . . . [N]or shall any State deprive any person of life, liberty or property, without due process of law. . . .

42 U.S.C. § 1983

Every person who, under color of statute, ordinance, regulation, custom, or usage, of any State . . . subjects, or causes to be subjected any citizen of the United States or

other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law. . . .

STATEMENT OF THE CASE

A. Statement of Facts

Starting with the graduating class of 1992, the Rye Neck School District ("the school district") began requiring all students attending Rye Neck High School to perform 40 hours of community service as a condition of graduation. A-46. Community service is defined by the school district as the "direct provision of a basic human service to a person or people in need without remuneration." A-56. Students must perform the required service for "people in need – people who are poor, homeless, handicapped, or in need of education, supervision, or companionship." *Id.*

To carry out this service, students must work with not-for-profit corporations, charities, political organizations, or public agencies. A-47. Such organizations include the American Red Cross, Planned Parenthood, Rye Nature Center, and AIDS Related Community Services. A-57-58. Students may suggest other organizations or agencies for which to perform their service, but such service must be pre-approved by the school coordinator for students to gain credit. A-47. Service through religious organizations may be eligible for credit under the program so long as the service does not amount to what the school determines to be proselytizing. A-61-62.

Students set their work schedule and provide their own transportation, with training and supervision of the students provided by the organizations, not school personnel. A-48, A-56. At least half of the service must be performed outside the high school. A-47, A-54. Although the service is performed outside any particular classroom and outside the school itself, students must submit two documents to the school. A-48-49. First, the organization or agency for which the student performs the work must document the hours worked and the student must turn over these verified time sheets to the community service coordinator at the high school. A-47-48, A-52. Second, as part of the required senior year class, "Managing Your Future," students must complete a form stating where they performed their service, the type of work they did, and what they gained from the service. A-48-49, A-53.

Students who do not complete all aspects of the program are denied the opportunity to receive a high school diploma. A-46. The school district makes no provision for students and their parents who object to required service to opt out of the program. A-46-47.

Petitioner Daniel Immediato was a student at Rye Neck High School and was subject to the mandatory community service requirement. A-49. In addition to attending school, Daniel is a certified lifeguard and worked during summers and after school to contribute to his family's modest income. A-43. Daniel and his parents recognize the significance of families working together to help others. A-42-45. They also understand that for this work to be meaningful, it must be private and be motivated by a genuinely voluntary concern for others. *Id.* As such, Daniel Immediato objected to and refused to participate in the school district's program. A-50. Accordingly,

he was denied the opportunity to graduate from high school. A-46-47.

Daniel's parents, Diane and Eugene Immediato, also objected to their son's participation in the mandatory community service program. A-50. Like their son, the Immediatos strongly support charity but believe that the decision to serve others must be determined by the family and must stem from one's conscience and through self-motivation, not government edict. A-42-45. They steadfastly attempt to impart these values to their children. *Id.*

Because of the family's limited income, they could not afford to send Daniel to a private school. A-44. The only way Daniel Immediato had the opportunity to receive a high school diploma would have been if he participated in the mandatory community service program to which he and his parents so strenuously object. A-46-47.

B. Proceedings Below

Petitioners, the Immediato family, brought suit in the United States District Court for the Southern District of New York on April 19, 1994. They challenged the program under Fourteenth Amendment guarantees of due process of law and privacy, and the Thirteenth Amendment's prohibition of involuntary servitude.[1] The district court had jurisdiction under 42 U.S.C. § 1983; 28 U.S.C. §§ 2201 and 2202; and 28 U.S.C. § 1331.

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[1] The Immediatos limit this petition to Fourteenth Amendment parental and personal liberty guarantees.

After a period of limited discovery, the parties agreed that there were no disputed issues of material fact and filed cross-motions for summary judgment along with a Joint Statement of Material Facts. On January 19, 1995, the district court issued a memorandum and order granting respondents' motion and denying petitioners' motion.

In rejecting petitioners' claims, the district court held that (1) the program did not constitute involuntary servitude; (2) parental rights under the Fourteenth Amendment are non-fundamental and subject to rational basis review, under which the mandatory community service program passed muster; (3) the decision whether to perform charitable service was not recognized under the Fourteenth Amendment's personal liberty guarantee; and (4) the program did not violate Daniel's privacy rights in personal information. The district court entered final judgment on February 10, 1995.

Petitioners filed a timely notice of appeal to the United States Court of Appeals for the Second Circuit and, on January 2, 1996, the Court entered a judgment and opinion affirming the district court's judgment.

The Immediato family filed with the Second Circuit a Petition for Rehearing and Suggestion for Rehearing In Banc. The Court, on February 15, 1996, denied the petition and rejected the suggestion for rehearing in banc.

REASONS FOR GRANTING THE WRIT

I. THIS CASE PRESENTS A TIMELY OPPORTUNITY FOR THIS COURT TO RESOLVE THE SPLITS IN JUDICIAL AUTHORITY AND THE AMBIGUITY IN THE LAW OVER THE PROPER APPLICATION OF FOURTEENTH AMENDMENT PARENTAL LIBERTY RIGHTS.

A. Overview

One of the most widely acknowledged and well-established rights at common law and at the founding of this country was the right of parents to have primary responsibility for the upbringing and education of their children. With the advent of compulsory education laws, parents surrendered some degree of authority over their children's education to the government. As courts recognized during the earlier part of this century, however, parental rights were not eviscerated in the public schools. Rather, an important balance was struck between parental and public school authority.

Today, this balance has been severely eroded. By compelling students to perform service to non-profit organizations and agencies, the school district in the instant case has taken a profoundly significant step beyond its traditional role.[2] It is not alone; a growing

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[2] Disputes over mandatory community service are likely to grow in coming years. Currently, it is estimated that approximately 8 percent of all public school districts have a mandatory service program, and other school districts are considering adopting service requirements. George Basler, *Volunteer Credit A Trend In Schools*, PRESS & SUN BULLETIN, December 14, 1994 (citing statistics provided by Learn & Serve

number of public schools – in the name of perceived societal needs – insist on taking over responsibilities that have until recently been left to parents. Tamara Henry, *Growing Debate Centers On Who Teaches Values*, USA TODAY, March 20, 1996; A-64-69. Moreover, public schools have begun to require activities, such as "mandatory volunteering," with little or no connection to the traditional school curriculum. Understandably, many parents are upset about these creeping intrusions into the family domain and have begun again demanding recognition of parental rights in the public schools. *Id.*

Amidst this increasing tension between public school and parental authority, the law surrounding Fourteenth Amendment parental liberty rights is ambiguous and conflicting. Although some recent decisions affirm the right of parents to direct their children's education as fundamental, other courts, including the Second Circuit in the instant case, characterize parental liberty as a non-fundamental right, leaving parents virtually powerless when governmental programs and regulations intrude into areas traditionally entrusted to family autonomy. This case presents a timely opportunity for this Court to resolve the uncertainty in the law and to restore much-needed balance between government prerogatives and parental rights.

Petitioners, Eugene and Diane Immediato, typify parents throughout the country concerned about increased

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America). Indeed, President Clinton in a recent speech urged all public middle and high schools to mandate volunteering as a graduation requirement. Susan Page, *Clinton: Let's Reward Community Service*, USA TODAY, March 10-12, 1996.

government intrusion into areas that had been left to family decision-making. The Immediatos believe that their family alone should determine whether and under what circumstances they and their children will perform charitable service to others. The parents support private charity and voluntary service to the community, but they believe that performing charity is a deeply personal matter that must remain between themselves and the recipients of their service, free from government oversight and coercion. *See* A-42-45 (Affidavit of the Immediato family).[3]

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[3] Keeping volunteering in the realm of individual initiative and personal conscience has deep roots in our heritage and in many religious teachings. *See, e.g.*, Alexis de Tocqueville, *Democracy in America* 287 (J.P. Mayer ed. 1969) (discussing America's grand tradition of voluntarism and private charitable efforts in creating "habits of the heart"); James Madison, *Memorial and Remonstrance Against Religious Assessments* (1785) (opposing all forms of mandatory tithing, whether it be to religious or educational institutions) (quoted in *Everson v. Board of Education of Ewing Twp.*, 330 U.S. 1, 35-37 (1947) (Rutledge, J., dissenting)); *see also Matthew* 6: 1, 3-4 (New King James Version) ("Take heed that you do not do charitable deeds before men, to be seen by them. . . . But when you do a charitable deed, do not let your left hand know what your right hand is doing, that your charitable deed may be in secret"); Ephraim E. Urbach, *The Sages: Their Concepts and Beliefs* (1987) (discussing importance of charity in Tannaim and Amoraim Jewish teachings); *The Koran*, S. iv. 114 ("if one exhorts to a deed of charity . . . [s]ecrecy is permissible, to him who does this seeking the good pleasure of God, we shall soon give a reward of the highest value"). Furthermore, the venerable institution of "anonymous" charitable giving is yet further evidence of the voluntary and private charitable spirit that flourishes so well in this country.

As the following sections set forth, recognition of parental liberty as a fundamental right strikes the proper balance between the state's interest in fulfilling educational goals and the ability of the Immediatos and all parents to direct their children's education. Petitioners respectfully ask this Court to resolve the ambiguity and conflicts in the law concerning parental rights; to reject the rational basis test as the appropriate standard; and to affirm as fundamental the right of parents to direct the upbringing and education of their children under the Fourteenth Amendment.

B. Since Meyer And Pierce Were Decided Before This Court's Modern Two-Tier Approach To Analyzing Constitutional Rights, Courts Are Uncertain And Have Split Over The Proper Level Of Scrutiny Applicable To Laws That Violate Parental Rights.

The right of parents to direct and control the upbringing and education of their children is firmly established in our constitutional heritage and guaranteed by the Fourteenth Amendment to the U.S. Constitution. *Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Farrington v. Tokushige*, 293 U.S. 284 (1927); *Prince v. Massachusetts*, 321 U.S. 158 (1944); *Carey v. Population Services*, 431 U.S. 678 (1977). As the Second Circuit recognized in its opinion, however, this Court has not addressed Fourteenth Amendment parental liberty rights in the educational context for decades, thus leading to ambiguity in the law and conflicts in federal and state courts. *See* A-13.

The First Circuit has also recently recognized the ambiguity in the *Meyer-Pierce* line of cases:

> The *Meyer* and *Pierce* cases were decided well before the current "right to privacy" jurisprudence was developed, and the Supreme Court has yet to decide whether the right to direct the upbringing and education of one's children is among those rights whose infringement merits heightened scrutiny.

Brown v. Hot, Sexy and Safer Productions, Inc., 68 F.3d 525, 533 (1st Cir. 1995), *cert. denied*, 116 S.Ct. 1044 (1996); *see also Blackwelder v. Safnauer*, 689 F. Supp. 106, 136 (N.D.N.Y. 1988) ("[t]he degree of judicial scrutiny to be applied to a governmental action that interferes with the privacy interests recognized in *Pierce* and *Meyer* . . . is not clear to this court"). Moreover, constitutional scholars also have acknowledged the uncertainty surrounding the nature of parental liberty rights. *See* Laurence H. Tribe, *American Constitutional Law* 1414-23 (2d ed. 1988); John E. Nowak & Ronald D. Rotunda, *Constitutional Law* § 11.7 (4th ed. 1991) (contrasting various levels of scrutiny applied by this Court to parental liberty claims).

The lack of clear guidance concerning the nature of Fourteenth Amendment parental liberty rights has led to conflicts among courts. The Second Circuit's holding that parental liberty is a non-fundamental right directly conflicts with two recent, important cases concerning the rights of parents in the public school context. Last year, the Supreme Judicial Court of Massachusetts held that "parents possess a fundamental liberty interest, protected

by the Fourteenth Amendment, to be free from unnecessary intrusion in the rearing of their children." *Curtis v. School Committee of Falmouth*, 652 N.E.2d 580, 584-86 (1995), *cert. denied*, 116 S.Ct. 753 (1996) (recognizing parental liberty as a fundamental right but rejecting parental challenge to condom distribution program in the public schools); *accord Alfonzo v. Fernandez*, 606 N.Y.S.2d 259, 265-67 (1993), *appeal dismissed without op.*, 614 N.Y.S.2d 388 (1994) (striking down condom distribution program in the public schools on Fourteenth Amendment parental liberty grounds and recognizing parental liberty as a fundamental constitutional right). The courts in Massachusetts and New York based their conclusions on this Court's decisions in *Meyer*, *Pierce*, and *Prince*.[4]

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[4] The conflict in interpreting Fourteenth Amendment parental liberty rights is clearly evident in the rulings of other courts as well, and even among decisions of the same court. *Compare, e.g., Michigan v. Bennett*, 501 N.W.2d 106 (Mich. 1993) (finding the right to direct the education of children to be a non-fundamental right) with *Dep't of Social Services v. Emanuel Baptist Preschool*, 455 N.W.2d 1 (Mich. 1990) (Cavanagh, J.) (finding the right to direct the education of one's children to be fundamental) and *Sheridan Rd. Baptist Church v. Dep't of Ed.*, 396 N.W.2d 373 (1986) (Riley, J.) (same); compare *Jordan by Jordan v. Jackson*, 15 F.3d 333, 342 (4th Cir. 1994) (emphasis added) ("[t]here are few rights more *fundamental* in and to our society than those of parents to rear their children as they deem appropriate") with *Cornwell v. State Bd. of Educ.*, 428 F.2d 471, 472 (4th Cir. 1970), *aff'g*, 314 F. Supp. 340 (D. Md. 1969) (rejecting parental liberty as a fundamental right in challenge to sex education class); *see also Murphy v. Arkansas*, 852 F.2d 1039 (8th Cir. 1988) (parental liberty is a non-fundamental right in the equal protection context); *Herndon v. Chapel Hill-Carrboro City Bd. of Educ.*, 899 F. Supp. 1443 (M.D.N.C. 1995) (rejecting parental liberty as a fundamental right in mandatory

Faced with a conflicting legal landscape, the Second Circuit chose to characterize parental liberty rights as "non-fundamental" and subject to rational basis review.[5] Petitioners urge this Court to review this holding, resolve the ambiguity in the law, and affirm parental liberty as a fundamental constitutional right.

C. A Solid Basis In The Law Exists For Recognizing And Affirming Parental Liberty As A Fundamental Right.

Parental liberty rights have a rich constitutional pedigree, and a firm foundation exists in the law for acknowledging such rights as fundamental.[6] Despite the lack of recent cases addressing this issue, this Court has established parental liberty as "essential to the orderly pursuit of happiness by free men." *Meyer*, 262 U.S. at 399. Furthermore, parental liberty is a basic value "implicit in

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community service challenge); *Ohio v. Whisner*, 351 N.E.2d 750, 769 (Ohio 1976) (emphasis added) ("it has long been recognized that the right of a parent to guide the education . . . of his or her children is indeed a *'fundamental right'* guaranteed by the due process clause of the Fourteenth Amendment").

[5] Contrary to the Second Circuit's holding in the instant case (A-13-14), *Meyer* and *Pierce* do not stand for the proposition that parental rights are subject to rational basis review. Although both cases use the term "reasonable," they were decided over a decade before the U.S. Supreme Court established its current standards of review in *United States v. Carolene Products*, 304 U.S. 144, 152 n.4 (1938) (setting forth modern "rational basis" review).

[6] *See, e.g., Meyer v. Nebraska*, 262 U.S. 390 (1923); *Pierce v. Society of Sisters*, 268 U.S. 510 (1925); *Farrington v. Tokushige*, 293 U.S. 284 (1927); *Prince v. Massachusetts*, 321 U.S. 158 (1944).

the concept of ordered liberty," thus meriting recognition of fundamental status. *See Griswold v. Connecticut*, 381 U.S. 479, 500 (1965) (Harlan, J., concurring).

Adding more authority for recognizing parental rights as fundamental, this Court has recently incorporated parental liberty rights – and *Meyer* and *Pierce* – into decisions involving other fundamental privacy rights recognized under the Fourteenth Amendment. *See, e.g., Griswold, id.* at 483 (incorporating "the principle of *Meyer* and *Pierce*"); *Ginsburg v. New York*, 390 U.S. 629, 639 (1968) (childrearing is "basic in the structure of our society"); *Roe v. Wade*, 410 U.S. 113, 153 (1973) (stating that family rights and childrearing are fundamental rights); *Kelly v. Johnson*, 425 U.S. 238, 244 (1976) (equating *Meyer* parental liberty rights to those rights recognized in *Roe* and *Griswold*); *Employment Div., Dep't of Human Res. v. Smith*, 494 U.S. 881 (1990) (equating "right of parents . . . to direct the education of their children" with "freedom of speech and of the press"); *Planned Parenthood of Southeastern PA v. Casey*, 505 U.S. 833, 848 (1992) (most recent affirmation of parental liberty rights).[7] As one commentator recently noted:

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[7] While the recognition of non-textual rights is a treacherous area, all members of this Court agree that such rights exist. *See Casey*, 505 U.S. at 848-49, 951-52, 981 (plurality and dissenting opinions). The essential disagreement is whether a claimed right is consistent with, or antagonistic to, the recognized traditions, laws, and background principles underlying the Constitution and our republic as a whole. *See Bowers v. Hardwick*, 478 U.S. 186, 192-95 (1985). As discussed *supra*, the long-standing decisions of this Court and the background principles of common law that have sought to reconcile the needs of public education with parental rights and responsibilities, *see* note 8, indicate that parental rights, though

> Although the Supreme Court has not had the opportunity to declare parents' rights to guide the education of their children as fundamental under its current analysis, early Court decisions found such rights to be essential. Moreover, the Court has stated in dicta that the right is fundamental. . . . Thus, parents' right to guide the education of their children may be fundamental.

Daniel J. Rose (Note), *Compulsory Education and Parent Rights: A Judicial Framework of Analysis*, 30 Boston Col. L. Rev. 861, 863 (1989).

The right of parents to have primary responsibility over the education of their children was well established at common law. *See* Bruce C. Hafen, *Children's Liberation and the New Egalitarianism: Some Reservations About Abandoning Youth to Their "Rights"*, 1976 B.Y.U. L. Rev. 606, 615 ("[t]he common law has long recognized parental rights as a key concept, not only for the specific purposes of domestic relations law, but as a fundamental assumption about the family as a basic social, economic, and political unit"); John Locke, *An Essay Concerning the True Original Extent and End of Civil Government*, ¶¶ 67, 69 (Great Books ed. 1991) (noting that parents may employ teachers but ultimate authority over children lies with parents). Both prior to and after the adoption of compulsory school attendance laws, courts also recognized that the common law right of parents to direct their children's education extended to having their children excused from certain

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non-textual, are encumbered with none of the difficulties that leave others highly controversial.

programs to which they objected within the public schools.[8]

With the advent of compulsory education, courts sought to balance the state's interest in education against parent's long-recognized common law right to direct their children's education, a balance sorely lacking in many modern public education decisions:

> The public school is one of the main bulwarks of our nation and we would not knowingly do anything to undermine it; but we should be careful to avoid putting our love of this noble institution to cause us to regard it as "all in all" and destroy the God-given and constitutional right of a parent to have some voice in the bringing up and education of his children. . . . [W]e want to be careful lest we carry the doctrine of government paternalism too far, for,

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[8] *See, e.g., Morrow v. Wood,* 35 Wis. 59 (1874) (child excused from required geography lessons due to parental objection); *Rulison v. Post,* 79 Ill. 567 (1875) (child excused from bookkeeping class); *School Board v. Thompson,* 103 P. 578 (Okla. 1909) (parent successfully objected to required singing lessons in the public schools); *Hobbs v. Germany,* 49 So. 515 (Miss. 1909) (child exempted from school requirement that homework be done at certain times); *State v. Ferguson,* 144 N.W. 1039 (Neb. 1914) (successful parental objection to music class); *Hardwick v. Board of School Trustees,* 205 P. 49 (Cal. App. 1921) (student exempted from dancing instruction on parental objection); *People ex rel. Vollmar v. Stanley,* 255 P. 610 (Colo. 1927) (child excused from study of biology); *see also* Mary-Michelle Upson Hirschoff, *Parents and the Public School Curriculum: Is There a Right to Have One's Child Excused From Objectionable Instruction?,* 50 Southern Cal. L. Rev. 871, 886-97 (1977) (hereinafter "Hirschoff"); Joel S. Moskowitz, *Parental Rights and State Education,* 50 Wash. L. Rev. 623, 636-43 (1975).

> after all is said and done, the prime factor in our scheme of government is the American home. . . . [School authorities] should not too jealously guard or attempt to defend their supposed prerogatives.

Ferguson, 144 N.W. at 1043-44; *see also Stanley* 255 P. 613-14 (emphasis added) ("the right of parents to select, *within limits*, what their children shall learn is one of the liberties guaranteed by the Fourteenth Amendment to the national Constitution"). Although parental rights were considered paramount, common law decisions established two important limits on parental rights in the public schools. First, students could not be exempted from classes deemed the "essentials of good citizenship." Hirschoff at 886. Furthermore, parents could not exercise their rights in a manner that adversely affected the rights of other parents and students. *Id.*[9]

Early common law cases recognizing and enforcing the right of parents to direct their children's education, including the right of parents to have some degree of authority while their children attended public schools, were the basis for the landmark *Meyer*, *Pierce*, and *Farrington* decisions. *See* Bruce C. Hafen, *The Constitutional Status of Marriage, Kinship, and Sexual Privacy – Balancing the Individual and Societal Interests*, 81 Mich. L. Rev. 473, 572 (1983) ("[w]hen the Court in 1923 first recognized that the right of parents to direct the upbringing of their children was part of the substantive liberty protected by

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[9] As Part E of this section of the petition sets forth, these common law rules provide an appropriate framework to resolve current disputes between public school districts and parents seeking to direct their children's education.

the due process clause, it did not create a new legal right out of whole cloth. It merely acknowledged in constitutional language the traditions . . . that predated the Constitution"); *see also* Hirschoff at 897.

In addition to respecting parental rights in the public school setting, the common law also explicitly recognized that parental liberty is worthy of fundamental status because it represents protection of an institution of the utmost importance to our society: the family.[10] As this Court has stated, "the sanctity of the family . . . is deeply rooted in this Nation's history and tradition. It is through the family that we inculcate and pass down many of our most cherished values, moral and cultural." *Moore v. City of East Cleveland*, 431 U.S. 494, 503-04 (1977) (Powell, J.).

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[10] While the First Amendment protects the right of individuals, including parents, to freely exercise their religious beliefs, the Fourteenth Amendment protects the autonomy of the family and guarantees the right of all parents to direct their children's education including such matters as "the inculcation of moral standards, religious beliefs, and elements of good citizenship." *Curtis*, 652 N.E.2d at 585 (*citing Wisconsin v. Yoder*, 406 U.S. 205, 233 (1972)). The Second Circuit mistakenly relied on another passage *Yoder*, 406 U.S. at 215-16, for its contention that non-religious objections to the public school curriculum receive rational basis review. *See* A-14. The *Yoder* decision was primarily a free exercise case that mentioned Fourteenth Amendment parental liberty rights in the context of guiding children's *religious* upbringing. Ronald D. Rotunda, John E. Nowak, & J. Nelson Young, *Treatise on Constitutional Law: Substance and Procedure* § 21.8 n.9 (1991 ed.). The passages from *Yoder* relied on by the Second Circuit in its decision merely reinforce the requirement that free exercise claims must be religiously based in order to receive the protection of the First Amendment. They do not address in any way Fourteenth Amendment parental liberty rights.

Accordingly, the right of parents to direct the upbringing and education of their children should likewise be affirmed as fundamental.[11]

D. Rational Basis Review Will Leave Parental Rights Unprotected.

Classification of Fourteenth Amendment parental liberty rights as non-fundamental and adoption of rational basis review for parental liberty claims would render virtually every current or future public school program or educational statute immune from challenge. Under rational basis review, a government law or program must be upheld "if there is any reasonably conceivable state of facts that could provide a rational basis" for the law. *F.C.C. v. Beach Communications, Inc.*, 113 S.Ct. 2096, 2101 (1993). In reality, such review "is tantamount to no review at all." *Id.* at 2106 n.3 (Stevens, J., concurring); *see also* John E. Nowak & Ronald D. Rotunda, *Constitutional Law*

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[11] This Court must not disregard the principled classification of Fourteenth Amendment parental liberty rights as fundamental. The consequence of this indifference to the history and principles of this Nation would be to invite the wholesale and effectively unreviewable displacement of parental direction in the education of children. In clarifying how this tradition is to be reconciled with intrusive public school programs, this Court ought not depart from this tradition. However, any departure should at least recognize that public school programs that implicate parental rights ought to be subject to heightened examination of the parental and state interests themselves. As discussed *supra*, adoption of rational basis review would make public school programs virtually unreviewable and entirely undermine the ability of parents to direct their children's education.

§§ 11.4, 14.3 (4th ed. 1991) (discussing extremely lax rational basis review standard).

Any public school requirement, no matter how onerous and invasive of parental rights and prerogatives, could be justified as furthering some "rational" educational objective. For the purpose of "educating them," students could be required to participate in political street demonstrations, violent sports activities, dissections of animals, graphic sexual demonstrations, etc., and parents would be left without recourse. Under rational basis review, there really are no limits on what could be required of students in the name of education.[12]

The constitutionality of public school programs or educational statutes should not be sustained merely by asserting valid or "rational" educational interests and declaring that the program furthers those interests, for such a non-standard drains parental liberty rights of all vitality in the public school context. This view clashes with both the decisions of this Court and our nation's recognition of the primary role of the family and parents in the upbringing and education of children. Accordingly, this Court should reject rational basis review as the appropriate standard when state authority violates parental rights.

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[12] Indeed, the requirements struck down in *Meyer* and *Pierce* were justified on the basis of furthering such valid educational purposes as promoting good citizenship values, and most likely would have been upheld if subject to modern rational basis review. *See Meyer*, 262 U.S. at 398; *Pierce*, 268 U.S. at 517.

E. Affirming Parental Rights As Fundamental Strikes The Proper Balance Between Constitutional Rights And Public School Autonomy.

If parental rights were affirmed as fundamental, then public school programs that burdened those rights would be subject to strict scrutiny. However, this Court has indicated that school board decisions concerning the curriculum of a public school are generally accorded deference. *See, e.g., Board of Education, Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853, 863 (1982).[13] Therefore, in addition to establishing certain boundaries to public school prerogatives, it is important to set certain limits on parental liberty claims in the public school setting in order to strike a proper and constitutionally

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[13] The normal deference afforded the traditional school curriculum, however, should not extend to functions or requirements that take place outside of the classroom and especially activities outside the school itself, a time when minors are under the exclusive authority of their parents. In the instant case, the required community service cannot strictly be characterized as part of "the curriculum." Although the service is ostensibly a part of the required senior year class, "Managing Your Future," students do not perform the service while in class. A-47, A-56. Half of the service can be performed during free periods in the school day, but the remaining hours must be performed outside the school itself. *Id.* Furthermore, unlike other school requirements, school officials do not supervise any of the service. A-48. Even this Court recognized in another context that community service could not be characterized as part of the traditional public school curriculum. *See Board of Educ. of Westside Com. Schools v. Mergens*, 496 U.S. 226, 240 (1990) (community service club considered "non-curriculum student group").

mandated balance between public school and parental authority.

As set forth previously, common law cases recognized that parents could not exempt their children from public school programs deemed the "essentials of good citizenship" nor could they exercise their rights in a manner that was disruptive to the administration of the schools. These important limiting principles should still set the respective boundaries for parental rights and the power of public schools today.

In addition to these common law requirements and before courts would even apply strict scrutiny, parents would also have to demonstrate that a particular public school program was "coercive," and thereby a violation of their right to direct their children's education. The Supreme Judicial Court of Massachusetts in *Curtis*, 652 N.E.2d at 586, held that "[c]oercion exists where the governmental action is mandatory and provides no outlet for parents, such as where refusal to participate in a program results in a sanction or in expulsion."

In the instant case, students will not receive a high school diploma under any circumstances unless they perform the service. Unlike many school requirements, there is no alternative assignment, opt-out provision, or means of gaining credit without having to perform actual service to others. The school district's mandatory community service program is therefore unquestionably coercive.

In the court below, petitioners suggested another limiting factor on parental liberty claims in the public schools – the "exposure/action" rule. Under this threshold requirement for stating a parental liberty claim in the

public schools, parents must demonstrate that their children are required to perform actions contrary to their parents' values, as opposed to merely being exposed to objectionable values and beliefs. Public schools could expand their curricula into areas traditionally left to family decision-making, so long as the schools do not force students to perform acts consistent with school officials' beliefs but contrary to parental values. This line of demarcation is especially apt where the compelled actions take place outside of school and have little or no connection to the traditional public school curriculum.[14]

For instance, public schools can teach such values as thrift, good work habits, democratic participation, abstinence – or community service. But decisions about whether to actually save money, obtain employment, vote in elections, engage in sexual activity, or perform service to others are entrusted by the Constitution to individual and family decision-making.

The *Curtis* court employed a rule similar to the exposure/action rule suggested by petitioners. While recognizing parental liberty rights as fundamental, the court held that the condom distribution program did not violate those rights:

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[14] The basis for petitioners' suggested rule can be found in *Mozert v. Hawkins Cty. Bd. of Educ.*, 827 F.2d 1058, 1064-65 (6th Cir. 1987), *cert. denied*, 484 U.S. 1066 (1988) (rejecting challenge by parents to reading program in the public schools), and early common law cases preserving parental rights in the public school setting. For instance, the *Mozert* court distinguished between reading and classroom discussions (which were constitutionally acceptable) and true "acts," such as role play (which were not).

> No classroom participation is required of students. The students are not required to seek out and accept the condoms, read the literature accompanying them, or participate in counseling regarding their use. In other words, the students are free to decline to participate in the program. . . . [Moreover,] mere exposure to programs at school does not amount to unconstitutional interference with parental liberties without the existence of some compulsory aspect to the program.

Id. at 586.[15] Applying this rule to compulsory actions in the public schools would serve an important limiting function, allowing public school officials broad discretion to determine their curricula, while still preserving parental rights.

Lastly, it is vitally important to stress the relief sought by petitioners and other parents pursuing parental liberty claims. Parents seek only to opt out of certain objectionable programs required by the public schools. Public schools would still have vast discretion to determine their curriculum, to experiment, and to teach whatever values they choose, while parents would have the ability to exempt their children from certain programs that require actions that have traditionally been left to family decision-making.

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[15] In direct contrast to the public school program at issue in *Curtis*, the school district in the instant case requires Daniel Immediato to participate in the mandatory community service program and perform acts that have traditionally been left to family decision-making.

Most importantly, parents could not dictate to the schools what other children should learn or prevent the school district from offering certain courses, or teaching sensitive matters to young people. Far from destroying public school harmony, allowing parents to have some modicum of control over the content of their children's education goes a long way toward resolving values controversies currently erupting in school districts throughout the country.

In the instant matter, the Immediatos do not seek to dictate what their child or any others are taught in the schools. They are not trying to prevent in any way the ability of public schools to expose the value of community service to their child, assign paper topics, take field trips, test his knowledge of community service opportunities, or offer voluntary service programs. They only wish to prevent the school district from forcing their child to perform acts that the traditions of our Nation demand must be undertaken subject only to family decision-making. Recognizing parental liberty as a fundamental constitutional right serves both the school district's interest in promoting educational values and preserves the ability of the Immediatos – and all parents – to have some degree of control over their children's education.

II. THIS CASE PRESENTS AN OPPORTUNITY FOR THIS COURT TO REAFFIRM THE COMMON LAW RULE THAT GOVERNMENTS CANNOT IMPOSE A LEGAL DUTY ON INDIVIDUALS TO SERVE OTHERS, AND THAT CHARITABLE WORK MUST BE LEFT TO INDIVIDUAL CONSCIENCE AND BELIEF.

Fundamental rights are those personal freedoms "implicit in the concept of ordered liberty,"[16] or "deeply rooted in this Nation's history and traditions."[17] One would be hard pressed to find a principle and freedom more deeply rooted in this Nation's history and traditions than that of individuals deciding for themselves whether and under what circumstances to perform acts of charity. Over 150 years ago, Alexis de Tocqueville marveled at how American volunteers and private associations performed functions that in other countries were assumed by the government.[18] De Tocqueville contrasted these "civil" institutions with political bodies, a sphere of society not suited for nurturing what he described as "habits of the heart." *Id.*[19]

The school district in this case has taken the civil institution of voluntary charity and turned it into a public high school graduation requirement; self-motivation and inspiration are now replaced by compulsion. The school

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[16] *Palko v. Connecticut*, 302 U.S. 319, 325 (1937), *overruled on other grounds, Benton v. Maryland*, 395 U.S. 784 (1969).

[17] *Moore v. City of East Cleveland*, 431 U.S. at 503.

[18] *See* de Tocqueville, *supra*, note 3.

[19] *See also* note 3, *supra* (discussing this country's tradition of private charity and voluntarism in serving others).

district's program clashes with the centuries-old tradition that the decision to provide charitable service to others – to volunteer – must come from an individual's conscience, not from a state-imposed obligation. That is why the colloquial expression for the school district's program – "mandatory volunteering" – strikes one as so strange, so oxymoronic.

Petitioners urge this Court to recognize that within the range of personal freedoms protected by the Fourteenth Amendment must be the right to determine whether an individual wishes to perform charitable service to others. The Second Circuit noted the fact (readily admitted by petitioners) that no court or case has directly addressed whether under the Constitution individuals can be compelled by government to perform charitable service. *See* A-18. A very good reason exists for the lack of case law on this issue: until the imposition of mandatory community service requirements, governments had never imposed such duties on individuals.[20]

Not only is the school district's "mandatory volunteering" program diametrically opposed to this Nation's history of voluntarism, it also flies in the face of the long-established common law principle of refusing to transform what many would consider a moral duty (service to

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[20] Requiring public high school students to perform service to others has no historical or common law antecedent and is of recent origin. The move toward mandating community service as a public high school graduation requirement arose mostly in the late 1980s and was largely spurred by a policy group advocating mandatory service. *See* Ernest L. Boyer, *High School: A Report on Secondary Education* (1983).

others) into a legal requirement. The common law "has always refused to transmute moral duties into legal duties." Charles O. Gregory, "The Good Samaritan and the Bad: The Anglo-American Law," in *The Good Samaritan and the Law* 23 (J. Ratcliffe, ed. 1966). Indeed, noted common law scholar Francis H. Bohlen concluded that "there is no distinction more deeply rooted in the common law and more fundamental than that between . . . active misconduct working positive injury to others and passive inaction, a failure to take positive steps to benefit others." Francis H. Bohlen, *The Moral Duty to Aid Others as a Basis of Tort Liability*, 56 U. Penn. L. Rev. 217, 219 (1908).

In direct contrast to the school district's program of required service to others, the common law "does not compel active benevolence between man and man. It is left to one's conscience whether he shall be a Good Samaritan or not." James Barr Adams, *Law and Morals*, 22 Harv. L. Rev. 97, 112 (1908). Moreover, "[t]he laissez-faire approach of the common law restrained men from committing acts of affirmative harm but did not make the government an agency for forcing men to help each other." Harold F. McNiece & John V. Thornton, *Affirmative Duties in Tort*, 58 Yale L. J. 1272, 1288 (1949).

In surveying Anglo-American legal doctrine, Bohlen also concluded that "no support can be derived from it for the contention that the law has recognized as a legal duty the moral, ethical, and humanitarian obligation to aid the unfortunate." Bohlen, *id.* The school district's program, however, in contravention of this legal tradition, obligates students to undertake the "direct provision of a basic human service to a person or people in need

without remuneration." *See* A-56. By requiring individuals to perform service to others, the school district violates a fundamental tenet of Anglo-American law concerning the legal obligations individuals owe to others.

Consequently, petitioners do not seek creation of a new constitutional right, but merely seek recognition of a privilege "long recognized at common law as essential to the orderly pursuit of happiness by free men." *See Meyer* 262 U.S. at 399; *Ingraham v. Wright*, 430 U.S. 651, 672-73 (1977) ("[t]he Due Process Clause . . . was intended to give Americans at least the protection against governmental power that they had long enjoyed as Englishmen against the power of the Crown"); *Michael H. v. Gerald D.*, 491 U.S. 110, 121-25 (1989) (exploring common law to determine substantive due process guarantees).[21]

The decision to serve others was left to individual decision-making at common law and throughout our Nation's history, and is one of the foundations of a free, civil, and voluntary society; it should be protected under the Constitution. Accordingly, petitioners respectfully ask this Court to recognize that the decision to serve others – a long standing privilege usurped by the school district in this case – is entrusted by the Fourteenth Amendment's

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[21] Significantly, this Court has examined common law guarantees to determine the extent of protections afforded public school students. In *Ingraham*, 430 U.S. at 660-63, for instance, this Court rejected constitutional restraints on corporal punishment in the public schools because the common law both permitted such punishment and provided remedies to students when the punishment was excessive.

personal liberty guarantee to the realm of individual decision-making.

CONCLUSION

This Court has declared that the very purpose of the Constitution is "to withdraw certain subjects from the vicissitudes of political controversy, to place them beyond the reach of majorities and officials." *West Virginia State Bd. of Educ. v. Barnette*, 319 U.S. 624, 638 (1943). The instant case is an example of a public school district simply going too far, compelling actions that under the common law and the U.S. Constitution must be entrusted to individual conscience and family decision-making. Petitioners respectfully urge that their Petition for a Writ of Certiorari be granted.

Respectfully submitted,

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UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

No. 189 August Term, 1995

(Argued: October 10, 1995 Decided: JAN -2 1996)

Docket No. 95-7237

DANIEL IMMEDIATO, DIANE IMMEDIATO, and EUGENE IMMEDIATO,

Plaintiffs-Appellants,

MARIO GIRONDA, JR., MARIO GIRONDA, and SANDRA GIRONDA,

Plaintiffs,

- v. -

RYE NECK SCHOOL DISTRICT, KATHLEEN D. GULOTTA, FRANK SPEDAFINO, BEATRICE CERASOLI, ALAN MANOCHERIN, JANICE K. ANDERSON, LIZ PERELSTEIN, PETER J. MUSTICH,

Defendants-Appellees.

Before: NEWMAN, *Chief Judge*, McLAUGHLIN and LEVAL, *Circuit Judges*.

A high school student and his parents sued their local school district and its officials, alleging that the district's mandatory community service program violated their constitutional rights. The United States District Court for the Southern District of New York (Brieant, *J.*) granted the defendants' motion for summary judgment,

holding that the program did not violate either the Thirteenth or Fourteenth Amendment.

AFFIRMED.

SCOTT G. BULLOCK, Institute for Justice, Washington, DC (William H. Mellor III, Clint Bolick, Institute for Justice, Washington, DC; Lance J. Gotko, New York, NY, of counsel), *for Plaintiffs-Appellants.*

PHYLLIS S. JAFFE, Plunkett & Jaffe, White Plains, NY, *for Defendants-Appellees.*

(Thomas A. Bowden, Baltimore, MD; Robert S. Getman, New York, NY, submitted a brief for *amicus curiae* The Association for Objective Law.)

(James F. Bendernagel, Dennis D. Hirsch, Anne K. Adams, Michael J. Raphael, Sidley & Austin, Washington, DC; Robert Teir, The American Alliance for Rights and Responsibilities, submitted a brief for *amicus curiae* The American Alliance for Rights and Responsibilities.)

McLAUGHLIN, *Circuit Judge*:

Daniel Immediato is a high school student in the Rye Neck (N.Y.) School District (the "District"). He and his parents (together, the "plaintiffs") brought an action pursuant to 42 U.S.C. § 1983 against the District, the members of the District Board of Education, and the District Superintendent (together, the "defendants"), in the

United States District Court for the Southern District of New York (Charles L. Brieant, Jr., *Judge*), alleging that the District's mandatory community service program (the "program") violated their constitutional rights. The plaintiffs argued that the mandatory community service program violated: (1) Daniel's Thirteenth Amendment rights; (2) the parents' Fourteenth Amendment rights; and (3) Daniel's Fourteenth Amendment rights. The plaintiffs requested declaratory and injunctive relief. The district court granted summary judgment for the defendants.

Plaintiffs now appeal, renewing the arguments raised below. We hold that the District's mandatory community service program does not violate the plaintiffs' constitutional rights, and thus affirm the judgment of the district court.

BACKGROUND

Rye Neck School District's public high school, located in Mamaroneck, New York, has an enrollment of about 275 students in grades 9-12. In 1990, the District instituted a mandatory community service program as part of the high school curriculum. Under the program, in order to earn their diplomas all students must complete forty hours of community service sometime during their four high-school years. They must also participate in a corresponding classroom discussion about their service. The program has no exceptions or "opt-out" provisions for students who object to performing community service.

There are rules regarding the organizations to which the students may donate their services, and the nature of the work they may perform. For their efforts to count

towards the forty-hour requirement, students may not receive pay for their services, nor may their services displace activities performed by paid employees of the organization being served. Furthermore, while up to twenty hours of service may be provided to the school itself or to younger students at the school, at least twenty hours must be provided to an organization outside the school.

Within the boundaries of these rules, the students have a large degree of latitude to choose their organizations. Students, for example, may work for not-for-profit corporations, charities, political organizations or public agencies. Although the school furnishes an extensive list of suggested organizations and of groups that have asked for student help, students remain free to suggest their own charitable organizations. Student proposals must win the approval of the school, but approval is almost always granted. To the best recollection of school officials, only two students have ever been told that their proposed service was ineligible for credit: (1) a student who wanted to work in his father's store; and (2) a student who was to be paid for babysitting.

Students may also provide their services to religiously-affiliated institutions, so long as the students' work involves charitable assistance, and not merely promotion of the religion or organization. For example, students may assist a church in feeding or housing the homeless, but will not receive credit for proselytizing.

The organizations for which the students work are responsible for any necessary training or supervision. The organizations must document the hours worked by

the students, and the students must submit this verified time sheet to the school. Students may perform their forty hours of service at any time over their four high school years, including the summers when school is not in session. Students set their own work schedules and provide their own transportation.

As part of a required senior-year course ("Managing Your Future"), students must complete a short form documenting and summarizing their community service. Listing where, when, and how they performed their service, students must also state what they "gained" from their experience and whether their service had any "career connection" for them. The form does not ask why they chose the particular organization or whether they agreed with its goals. After completing the form, the students discuss their service with the teacher and other students. This discussion is limited to the information on the form. The program is graded on a pass-fail basis, and students are required to meet certain benchmarks (e.g., 10 hours) by the end of each quarter of their senior year to pass.

Daniel Immediato, a student at the District's high school, objects to the mandatory community service program. He believes that charitable activities and community service, while admirable, must be left to an individual's conscience, and should not be mandated by the school. He also desires to keep private any information about what community service he does or does not perform. Daniel's parents, co-plaintiffs, concede that community service is rewarding, but maintain that it must remain a matter of individual choice. They have tried to instill these values in Daniel, but fear that the

school's mandatory community service program will instead teach him that guidance on moral issues should come from the government, rather than from within.

Daniel and his parents filed a complaint against the District and several of its officers. They contend that the mandatory community service program conditions the right to public education on the surrender of their constitutional rights. Specifically, they assert that the program: (1) imposes involuntary servitude upon Daniel, in violation of the Thirteenth Amendment; (2) infringes on Daniel's parents' Fourteenth Amendment right to direct his upbringing and education; (3) infringes on Daniel's personal liberty, in violation of the Fourteenth Amendment; and (4) violates Daniel's right to privacy, in violation of the Fourteenth Amendment. The plaintiffs asked the district court to declare the program unconstitutional, and to permanently enjoin the defendants from imposing the program. The defendants denied that the program violated any of the plaintiffs' constitutional rights, and argued that, in any event, the district court should abstain from hearing the case under *Burford v. Sun Oil Co.*, 319 U.S. 315 (1943) (a federal court should abstain from hearing complex state-law questions bearing on substantial policy issues).

After limited discovery, the parties agreed that there were no disputed issues of material fact, and submitted a Joint Statement of Material Facts. The parties also filed motions for summary judgment. On January 19, 1995, the district court issued a thorough memorandum and order granting summary judgment for the defendants, and denying the plaintiffs' similar motion. *Immediato v. Rye Neck School District*, 873 F. Supp. 846 (S.D.N.Y. 1995). The

court held that *Burford* abstention was inappropriate, and went on to find that the program violated neither Daniel's nor his parents' constitutional rights. Plaintiffs now appeal, renewing the same four constitutional challenges. The District does not challenge the court's failure to abstain, so the *Burford* question is not before us.

DISCUSSION

We review a grant of summary judgment *de novo*. *Litton Indus., Inc. v. Lehman Bros. Kuhn Loeb Inc.*, 967 F.2d 742, 746 (2d Cir. 1992); *see also Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986).

I. Thirteenth Amendment

Plaintiffs argue that, because the mandatory community service program "requires students to serve others" or forfeit a high school diploma, the program constitutes involuntary servitude. We disagree.

The Thirteenth Amendment provides:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

U.S. Const., amend. XIII, § 1. The dispositive question, then, is whether the mandatory community service program rises to the level of "involuntary servitude" contemplated by the amendment.

The Supreme Court has conceded that, "[w]hile the general spirit of the phrase 'involuntary servitude' is easily comprehended, the exact range of conditions it prohibits is harder to define." *United States v. Kozminski*, 487 U.S. 931, 942 (1988). The Supreme Court has observed, however, that "the phrase 'involuntary servitude' was intended 'to cover those forms of compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results.' " *Id.* (quoting *Butler v. Perry*, 240 U.S. 328, 332 (1916)); *see also United States v. Shackney*, 333 F.2d 475, 485 (2d Cir. 1964). We have added that the ban on involuntary servitude "was to abolish all practices whereby subjection having some of the incidents of slavery was legally enforced. . . . " *Shackney*, 333 F.2d at 485.

In application, courts have consistently found the involuntary servitude standard is not so rigorous as to prohibit all forms of labor that one person is compelled to perform for the benefit of another. The Thirteenth Amendment does not bar labor that an individual may, at least in some sense, choose not to perform, even where the consequences of that choice are "exceedingly bad." *Id.* at 486; *see also Watson v. Graves*, 909 F.2d 1549, 1552 (5th Cir. 1990). For example, a state may require an attorney to work *pro bono*, *United States v. 30.64 Acres of Land*, 795 F.2d 796, 800-01 (9th Cir. 1986) (attorney may, in the alternative, choose not to practice law), or a doctor who has accepted scholarship funds to perform *pro bono* services, *United States v. Redovan*, 656 F. Supp. 121, 128-29 (E.D. Pa. 1986), *aff'd*, 826 F.2d 1057 (3d Cir. 1987) (doctor may choose to pay damages for breach of contract). The government may also require the performance of "civic

duties" such as military service, *Selective Draft Law Cases*, 245 U.S. 366, 390 (1918), jury duty, *see Hurtado v. United States*, 410 U.S. 578, 589 n.11 (1973), and upkeep of local public roads, *Butler*, 240 U.S. at 333, without trenching upon the Thirteenth Amendment.

In *Jobson v. Henne*, 355 F.2d 129, 132 (2d Cir. 1966), we suggested that the constitutionality of forced labor turns, in large measure, on the nature and amount of the work demanded, and the purpose for which it is required. Thus, while the Thirteenth Amendment does not foreclose the ability of the state to require chores of its institutionalized mental patients, we have recognized that "there may be some mandatory programs so ruthless in the amount of work demanded, and in the conditions under which the work must be performed, and thus so devoid of therapeutic purpose, that a court justifiably could conclude that the [work constituted] . . . involuntary servitude." *Id.*

Like so many thorny legal distinctions, it is all a matter of degree. Guided by the Supreme Court in *Butler* and *Kozminski*, our own decisions in *Shackney*[1] and *Jobson*, and the import of the other cases mentioned above, we join the Third Circuit in finding that the appropriate analysis under the Thirteenth Amendment is a "contextual approach," *Steirer v. Bethlehem Area School Dist.*, 987

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[1] We do not believe that any of the conclusions reached in *Shackney*, which relied in part on *Hodges v. United States*, 203 U.S. 1 (1906), have been altered by the substantial overruling of *Hodges* in *Jones v. Alfred H. Mayer Co.*, 392 U.S. 409, 443 n. 78 (1968).

F.2d 989, 1000 (3d Cir. 1993), examining the challenged labor through a wider constitutional prism.

Plaintiffs urge us to ignore context and to focus instead upon the "plain meaning" of the amendment. They argue that, because the organization for which Daniel volunteers will receive a tangible benefit, his work is, almost by definition, "servitude." And they note that, because service is forced upon Daniel under the threat of withholding his high school diploma, the service is "involuntary." Therefore, the plaintiffs assert, the program falls within the plain meaning of "involuntary servitude."

Matters are rarely that simple. A search for the plain meaning of the constitutional text does not require – and, indeed, often cannot support – such clinical lexical dissection. Rather, the inquiry must be whether, "taking as a whole the set of conditions existing in the imposition of a mandatory community service program in a public high school, the students providing the services are in a condition of involuntary servitude," *Steirer*, 987 F.2d at 998, as that singular phrase is understood in its historical context.

Taking a contextual approach, we have no trouble concluding that the mandatory community service program does not amount to involuntary servitude in the constitutional sense. The work required is not severe: students must perform only forty hours of service in four years. Furthermore, the nature of the work required and conditions under which it must be performed are hardly onerous. Students may choose among a nearly infinite variety of organizations offering a kaleidoscope of service

activities. They are free to arrange their own work schedules, and to work in the summers when other school-related duties are minimal.

It is important to note that the purpose of the program is not exploitative. Rather, it is educational, particularly when coupled with the related classroom discussions. Finally, the level of coercion is not so high as to compel a finding of involuntary servitude. Although students who forego their required service will not graduate, they may avoid the program and its penalties by attending private school, transferring to another public high school, or studying at home to achieve a high school equivalency certificate. While these choices may be economically or psychologically painful, choices they are, nonetheless. They might not render the program voluntary, but they contribute to the conclusion that it is not involuntary servitude.

Considering all these factors, we find that the program is not constitutionally infirm. That is not to say that any and every service program that a public school district may devise would survive constitutional scrutiny. If, for instance, the students were required to spend their Saturdays at the homes of their teachers, washing their cars, painting their houses, and weeding their gardens, the extent, nature, and conditions of "service," and the more obviously exploitative purpose of the program, might indeed warrant a finding of "involuntary servitude." But this is not our case.

Because we conclude that the mandatory community service program is not, on the whole, "compulsory labor" which, "in practical operation" produces "undesirable

results" analogous to slavery, *Kozminski*, 487 U.S. at 942, we hold that the District's mandatory community service program does not constitute impermissible involuntary servitude.

II. Fourteenth Amendment

Plaintiffs also argue that the program violates both Daniel's and his parents' rights under the Due Process Clause of the Fourteenth Amendment. Again, we disagree.

Our analysis begins with the proposition that the Due Process Clause of the Fourteenth Amendment embodies a substantive component that protects against "certain government actions regardless of the fairness of the procedures used to implement them." *Daniels v. Williams*, 474 U.S. 327, 331 (1986). This "substantive due process," as it has come to be known, however, does not stand as a bar to all governmental regulations that may in some sense implicate a plaintiff's "liberty." Rather, the level of scrutiny with which we will examine a governmental regulation turns on the nature of the right at issue.

When the right infringed is "fundamental," the governmental regulation must be "narrowly tailored to serve a compelling state interest." *Reno v. Flores*, ___ U.S. ___, 113 S.Ct. 1439, 1447 (1993). Rights are fundamental when they are "implicit in the concept of ordered liberty," *Palko v. Connecticut*, 302 U.S. 319, 325-26 (1937), or "deeply rooted in this Nation's history and tradition." *Moore v. East Cleveland*, 431 U.S. 494, 503 (1977); *see also Bowers v. Hardwick*, 478 U.S. 186, 191-92 (1986); John E. Nowak, Ronald D. Rotunda, *Constitutional Law* § 11.4, at 374 (4th

ed. 1991). Where the claimed right is not fundamental, the governmental regulation need only be reasonably related to a legitimate state objective. *Flores*, 113 S.Ct. at 1448-49; *Bowers*, 478 U.S. at 196.

A. Parental Rights

Plaintiffs argue for a "constitutional right of parents to have primary responsibility over the upbringing and education of their children," and they contend that such a right is sufficiently basic and traditional to warrant strict scrutiny. From these two propositions plaintiffs ask us to conclude that parents have a fundamental constitutional right to exempt their children from educational requirements to which they object on secular grounds. We appraise this request with humility and caution, as "judicial self-restraint requires us to exercise the utmost care whenever we are asked to break new ground in this field." *Flores*, 113 S.Ct. at 1447.

Parents, of course, have a liberty interest, properly cognizable under the Fourteenth Amendment, in the upbringing of their children. *See Runyon v. McCrary*, 427 U.S. 160, 176 (1976); *Wisconsin v. Yoder*, 406 U.S. 205, 232 (1972). The Supreme Court, however, has never expressly indicated whether this "parental right," when properly invoked against a state regulation, is fundamental, deserving strict scrutiny, or earns only a rational basis review. Our reading of the appropriate caselaw convinces us that rational basis review is appropriate.

In *Meyer v. Nebraska*, 262 U.S. 390 (1923), the Supreme Court faced a challenge to a state law forbidding schools from teaching foreign languages to students below the

eighth grade. The Court held the law unconstitutional as applied, stating that it was "arbitrary and without *reasonable relation* to any end within the competency of the State." *Id.* at 403 (emphasis added). Similarly, in *Pierce v. Society of Sisters*, 268 U.S. 510 (1925), the Court struck down a state law requiring parents to send their children aged 8-16 to public school only (and making it a misdemeanor to send them to private school). The Court, tracking its language from *Meyer*, found that the statute had "no *reasonable relation* to some purpose within the competency of the State." *Id.* at 535 (emphasis added).

More recently, in *Wisconsin v. Yoder*, 406 U.S. 205 (1972), Amish plaintiffs argued that mandatory school attendance beyond the eighth grade violated their rights under the First Amendment's Religion Clauses. Finding for the plaintiffs' the Court was careful to focus upon the religious nature of their claims, observing in contrast that "[a] way of life, however virtuous and admirable, may not be interposed as a barrier to *reasonable* state regulation of education if it is based on purely secular considerations." *Id.* at 215 (emphasis added). Thus, while parents have definite rights over their children's education, "they have no constitutional right to provide their children with . . . education unfettered by *reasonable* government regulation." *Runyon*, 427 U.S. at 178 (emphasis added).

Reviewing these cases and others, we have observed that "[t]here is a long line of precedents indicating that the government may not *unreasonably* interfere with . . . [the right to] raise one's children as one wishes." *Black v. Beame*, 550 F.2d 815, 816 (2d Cir. 1977) (emphasis added). Other circuits, analyzing state-imposed educational requirements, have expressly applied the rational

basis standard when reviewing a parent's claimed right to control the upbringing of their child. *See Murphy v. Arkansas*, 852 F.2d 1039 (8th Cir. 1988); *Cornwell v. State Board of Educ.*, 428 F.2d 471 (4th Cir.) (adopting *per curiam* the full opinion in *Cornwell v. State Board of Educ.*, 314 F. Supp. 340 (D. Md. 1969)), *cert. denied*, 400 U.S. 942 (1970).

We thus conclude that where, as here, parents seek for secular reasons to exempt their child from an educational requirement and the basis is a claimed right to direct the "upbringing" of their child, rational basis review applies. We are aware that Daniel's parents object because of their "values" or "morals," as opposed to a general objection to the educational wisdom of the program, but we do not find this difference to be of constitutional significance. While the Constitution does indeed distinguish between religious objections and secular objections, *see* U.S. Const., amend. I; *Yoder*, 406 U.S. at 215-19, it makes no similar distinctions among purely *secular* objections based on values, morals, or other firmly-held beliefs.

Furthermore, we do not share plaintiffs' belief that the standard of review should be ratcheted up because the program forces students to "act" in contravention of their parents' values, as opposed to simply exposing the students to information that conflicts on an intellectual plane with those values. First, this "exposure/action" distinction is somewhat chimerical, particularly in the educational context. In the course of education, schools often require more than a passive glance at a book. Indeed, "for the things we have to learn before we can do them, we learn by doing them." Aristotle, *Nicomachean Ethics*, bk. II, ch. 1. Second, any distinction that can be

drawn between exposure and action should properly bear on whether the regulation meets the appropriate standard of review, and not on what that standard of review should be. It may be that, in certain circumstances, exposing students to ideas in the name of education is rational, while requiring them to act on those ideas is not.

The District's mandatory community service program easily meets the rational basis test. Education is unquestionably a legitimate state interest. *See Brown v. Board of Educ.*, 347 U.S. 483, 493 (1954) ("education is perhaps the most important function of state and local governments"); *Ambach v. Norwick*, 441 U.S. 68, 80 (1979). Indeed, the Supreme Court has indicated that the state has a "compelling" interest in educating its youth, to prepare them both "to participate effectively and intelligently in our open political system," and "to be self-reliant and self-sufficient participants in society." *Yoder*, 406 U.S. at 221. The state's interest in education extends to teaching students the values and habits of good citizenship, and introducing them to their social responsibilities as citizens. *See Norwick*, 441 U.S. at 80.

Furthermore, the mandatory community service program rationally furthers this state objective. The District reasonably concluded that the mandatory community service program would expose students to the needs of their communities and to the various ways in which a democratic system of volunteerism can respond to those needs. In doing so, the program helps students recognize their place in their communities, and, ideally, inspires them to introspection regarding their larger role in our political system. The program may also help students develop a connection between school and work, and give students

an opportunity to evaluate possible careers. The District was also reasonable in concluding that these goals were best achieved by having students actually perform service for a limited amount of time, and discuss that service, as opposed to merely reading about service opportunities. Indeed, the program's focus on learning-by-doing may be crucial in imparting the lessons of the service program.

Because the District's mandatory community service program is reasonably related to the state's legitimate function of educating its students, we hold that the program does not violate Daniel's parents' Fourteenth Amendment rights.

B. Student Rights

Plaintiffs also argue that the mandatory community service program violates Daniel's rights under the Fourteenth Amendment. Specifically, they allege that the program violates his rights to: (1) personal liberty; and (2) privacy. Having concluded that the program meets a rational basis review, we need change our analysis only if the substantive due process rights asserted by Daniel are "fundamental," and thus require more exacting scrutiny. We find that they do not.

First, Daniel's claim that the prcgram violates his right to "personal liberty" does little more than parrot the language of the Fourteenth Amendment. Although substantive due process rights are guaranteed to an individual, in part, through the liberty component of the Due Process Clause, *see, e.g., Daniels v. Williams*, 474 U.S. 327, 331 (1986), this does not mean that a fundamental right is

implicated every time a governmental regulation intrudes on an individual's "liberty." Rather, as mentioned above, strict scrutiny is reserved only for those governmental regulations that implicate personal freedoms "implicit in the concept of ordered liberty." *Palko*, 302 U.S. at 325.

Plaintiffs argue that the choice of when and whether to serve others "has always been left to individual conscience and belief." However, they cite not a single case in which this "individual choice" has been declared a fundamental right, or has warranted strict scrutiny of a governmental regulation. In light of the Supreme Court's recent admonition that we should be "reluctant to expand the concept of substantive due process," *Collins v. City of Harker Heights*, ___ U.S. ___, 112 S.Ct. 1061, 1068 (1992), we decline plaintiffs' invitation to be the first court to so hold. Daniel's choice as to how to spend his free time, and whether or not he will perform any volunteer services, is not the stuff to which strict scrutiny is devoted.

Daniel's proffered right of privacy fares no better. Plaintiffs claim that, by obliging students to disclose the organization for which they volunteered, the program unconstitutionally compels the students to disclose "personal information" protected by the Fourteenth Amendment. It does no such thing.

Initially, we doubt that the program questionnaire and subsequent classroom discussion implicate any constitutional privacy right or interest. Daniel may choose his service organization from a broad array of organizations, some political or religious, and others clearly neutral. If he does not wish to disclose deeply-held political or religious beliefs, he can simply choose one of the

secular, non-partisan organizations. And even if Daniel chooses a political or religious organization, he is not required to state why he chose that group, or whether or not he agrees with its goals and aims, but only what he did and what he learned from the experience.

Nor does the program effectively chill Daniel's ability to join organizations of his own choosing in a private setting. Daniel is not required to disclose every organization for which he volunteers, but only that organization he chooses for his credit toward forty hours of community service. Daniel is free, on his own time and of his own volition, to serve any organization he likes, without having to tell anyone about it. True, Daniel may be tempted to choose a neutral organization over another preferred organization for those forty hours. But this is not so profound a burden as to raise significant constitutional concerns.

Even if Daniel does state a privacy interest cognizable under the Fourteenth Amendment, we find that the required disclosure as part of the program passes constitutional muster. In *Barry v. City of New York*, 712 F.2d 1554 (2d Cir. 1983), we noted that the correct level of scrutiny for a compelled disclosure of personal information is an "intermediate . . . balancing approach." *Id.* at 1559. Because the program furthers the state's significant interest in education, and requires the disclosure of minimal (*if any*) personal information, in the limited setting of the forty-hour service requirement, it is, on balance, easily constitutional.

Plaintiffs reliance on *Shelton v. Tucker*, 364 U.S. 479 (1960), (and similar cases) is misplaced. First, *Shelton*

involved freedom of association under the First Amendment, not a general right to privacy under the Due Process Clause of the Fourteenth Amendment. Second, *Shelton* explicitly limited the scope of its holding in a manner that practically eviscerates Daniel's claim. The Court in *Shelton* dealt with a state law requiring "every teacher as a condition of employment in a state-supported school or college, to file annually an affidavit listing without limitation every organization to which he has belonged or regularly contributed within the preceding five years." *Id.* at 480. Striking it down, the Court emphasized:

> The question to be decided here is not whether the [State] . . . can ask certain of its teachers about all their organizational relationships. It is not whether the State can ask all of its teachers about certain of their associational ties. It is not whether teachers can be asked how many organizations they belong to, or how much time they spend in organizational activity. The question is whether the State can ask every one of its teachers to disclose every single organization with which he has been associated over a five-year period.

Id. at 487-88. The Court concluded that "[t]he unlimited and indiscriminate sweep of the statute" rendered it unconstitutional. *Id.* at 490. In no way does *Shelton*, or any other case cited by plaintiffs, support the notion that Daniel's Fourteenth Amendment right to privacy prohibits the school from requiring Daniel to disclose the single organization for which he performed his limited service in conjunction with a reasonable educational requirement.

In sum, the mandatory community service program does not violate Daniel's Fourteenth Amendment rights.

CONCLUSION

We have considered all or plaintiffs' arguments, and find them to be without merit. Accordingly, the judgment of the district court is affirmed.

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT
UNITED STATES COURT HOUSE
40 FOLEY SQUARE
NEW YORK 10007

GEORGE LANGE III
CLERK

At a stated term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse, Foley Square, in the City of New York, on the 15th day of February one thousand nine hundred and ninety-six.

Immediato

v Dkt No: 95-7237

Rye Neck School Dist

A petition for rehearing containing a suggestion that the action be *reheard* in banc having been filed herein by the appellants DANIEL IMMEDIATO ET AL.

Upon consideration by the panel that decided the appeal, it is Ordered that said petition for rehearing is **DENIED.**

It is further noted that the suggestion for rehearing in banc has been transmitted to the judges for the court in regular active service and to any other judge that heard

the appeal and that no such judge has requested that a vote be taken thereon.

FOR THE COURT

GEORGE LANGE III, Clerk

By: /s/ Beth J. Meador
Beth J. Meador,
Administrative Attorney

p o ccc
inbancdn—frm

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL IMMEDIATO, a minor, by DIANE and EUGENE IMMEDIATO, as Guardians, and in their own right, et al.	
Plaintiffs,	94 Civ 2831(CLB)
– against –	
RYE NECK SCHOOL DISTRICT; KATHLEEN D. GULOTTA, FRANK SPEDAFINO, BEATRICE CERASOLI, ALAN MANOCHERIAN, JANICE K. ANDERSON, LIZ PERELSTEIN, in their official capacities as members of the Rye Neck School District Board of Education; and PETER J. MUSTICH, in his official capacity as Superintendent of Rye Neck School District,	**MEMORANDUM AND ORDER**
Defendants.	

Brieant, J.

Plaintiffs, Daniel Immediato, A Rye Neck high school student and resident of Mamaroneck, New York in this district, together with his parents, Diane and Eugene Immediato, filed this action pursuant to 42 U.S.C. § 1983 challenging the constitutionality of a mandatory community service program ("the Program"), described below, established by Defendants Rye Neck School District and Board of Education. Plaintiffs contend that the Program

violates the students' rights under the Thirteenth and Fourteenth Amendments, as well as the parents' rights to direct the upbringing and education of their children under the Fourteenth Amendment of the United States Constitution.

Pursuant to Fed. R. Civ. P. 56, all parties move for summary judgment. An amicus brief in support of Defendants was filed by the American Alliance for Rights and Responsibilities, a national public interest group with experience in the area of community service programs.

The facts set forth below are conceded to be true, or assumed to be true for purposes of these motions.

Defendant Rye Neck School District is a Union Free School District established by the resident electors pursuant to New York State Education Law. It operates a high school, located in Mamaroneck, New York, which has a current enrollment of 278 students, grades 9 through 12. In 1990 the Rye Neck Board of Education, consisting of members elected by the parents and residents of the district, expressly voted to establish a mandatory community service program in the high school. Commencing with the graduating class of 1992, students in grades 9 through 12 would be required to perform 40 hours of "community service" during the four high school years as a condition of graduation ("the Program").

Students may not receive pay for their services. The required service must be performed "with people in need – people who are poor, homeless, handicapped, or in need of education, supervision, or companionship." Exh. C-1 to Joint Statement of Material Facts. Students may

work with not-for-profit corporations, sectarian and non-sectarian charities, public agencies or political organizations. Many organizations request service through announcements and bulletins posted at school. Students may suggest other agencies or organizations for which to perform service, but the nature of such service must be pre-approved by the school coordinators of the Program in order for students to gain credit for their work.

Half of the required 40 hours can be provided in the form of voluntary service to the Rye Neck School District or to younger students within the District during the school day. A minimum of twenty hours of service, however, must be performed outside the high school.

Students may perform the service at any time during the four high school years, including during the summer. Students may establish their own work schedule by agreement with the recipient agencies or organizations. Any training or necessary supervision of the students is provided by the agencies or organizations, not by the school personnel. After the service is completed, the students must submit to the school verified time sheets which document the number of hours worked.

As part of a required senior year classroom course entitled, "Managing Your Future," all students must complete a questionnaire/form asking "where, when, and what" they did, what they gained from the service, and whether there was "any career connection." Exh. B to Joint Statement of Material Facts. Also as a part of the required course, students discuss in the classroom with the teacher and their fellow students where they performed their service, the type of work they did, and what

they gained from their experience. Students are not required to disclose whey they selected the particular community service or whether or not they agree with the aims of the particular agency or organization.

While the course itself is graded Pass-Fail, if the community service hours are not completed, the student will be ineligible for graduation. The Program makes no provision for students or parents who object to mandatory community service and seek to opt out of the Program or to be relieved from its obligations.

It was disclosed at the hearing before this Court, held on November 10, 1994, that Plaintiffs in this case have not petitioned the Commissioner of Education of New York State for an exemption from the requirement. However, Commissioner Sobol on March 13, 1990, in an administrative appeal from a very similar program having the same title, established in 1987 by the adjoining City of Rye (New York) School District, held that such a program was "not arbitrary, capricious or unreasonable" and found affirmatively that it would "benefit students in their post-graduate endeavors" and that other school districts should be "encourage[d] . . . to pursue this laudable practice." *See Appeal of Anne O'Neill*, Judicial Decision of the Commissioner No. 12,300 (March 13, 1990); Exhibit to Defendants' Memorandum of Law in Support of Motion for Summary Judgment.

Plaintiff Daniel Immediato is currently a student at Rye Neck High School and subject to the mandatory community service requirement as a condition of graduation.[1]

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[1] Plaintiffs Mario Gironda, Jr. and his parents have withdrawn from the litigation.

At the outset, the Court notes the tension between the purposes of majoritarian government and the desires of individuals to live unrestricted by government regulations which appear to them to be worthless, the latter implicating a constitutionally protected liberty interest. These forces clash readily in the area of education, where our nation has enjoyed a long history of encouraging families to take responsibility for the instruction of their own children, while at the same time, making school attendance compulsory and granting control of the curriculum to state and local officials.

The late Honorable Frank C. Moore, who served as Lieutenant Governor of New York, a skilled municipal lawyer and later head of the Office of Local Government of the State of New York, was generally regarded as the guardian and protector of the small units of elected local government in New York. Governor Moore preached that "Home Rule is the right to be misgoverned by our friends and neighbors." The goal of local Home Rule is to allow communities to develop rules and regulations for the management – or mismanagement – of their own affairs, through forms of majority rule existing by the very nature of a republican form of government. An individual may disagree with a particular policy or rule implemented by duly elected local representatives within the scope of the responsibility entrusted to them. Ordinarily, that person must abide by the general law while attempting to persuade others in the community to revise the rule, or to elect new local representatives who will do so.

The United States Supreme Court has recognized the benefits of local responsibility for public education:

> [O]ne of the peculiar strengths of our form of government [is] each State's freedom to 'serve as a laboratory; and try novel social and economic experiments.' No area of social concern stands to profit more from a multiplicity of viewpoints and from a diversity of approaches than does public education.

San Antonio Independent School District v. Rodriguez, 411 U.S. 1, 50 (1973) (Powell, J., quoting in part from the dissent of Justice Brandeis in *New State Ice Co. v. Liebmann*, 285 U.S. 262 (1932)). It is "long recognized that local school boards have broad discretion in the management of school affairs." *Board of Education, Island Trees Union Free School Dist. No. 26 v. Pico*, 457 U.S. 853, 863 (1982) (Brennan, J.).

In New York, the Board of Education of a Union Free School District may determine initially whether a particular course or program will be established or discontinued. *See* New York State Education Law § 1709(3) ("The said board of education of every union free school district shall have power, and it shall be its duty . . . [t]o prescribe the course of study by which the pupils of the schools shall be graded and classified. . . . ").[2] The New York State Commissioner of Education, as the chief executive officer of the state system of education, is empowered to enforce all laws relating to the education system of the state. New York State Education Law § 305. In a Union Free School District, the Commissioner is charged with the general supervision of the board of education, and its

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[2] The local board of education may consist of between three and nine trustees who are elected to serve for three, four or five years. *See* New York State Education Law § 1702.

management and conduct of all departments of instruction. New York State Education Law § 309. A party aggrieved by the official actions of local school officials, including a board of education, may appeal for relief to the Commissioner of Education, pursuant to New York State Education Law § 310(7). That right to appeal to the Commissioner of Education supplements but does not preclude redress from a court in the proper case where the plaintiffs allege violation of their Constitutional rights. *See Plano v. Baker,* 504 F.2d 595 (2d Cir. 1974); *Jacobson v. Board of Ed. of City of New York,* 177 Misc. 809, 31 N.Y.S.2d 725 (Sup. Ct. Kings County 1941), *modified on other grounds,* 37 N.Y.S.2d 647 (2d Dept. 1942), *appeal denied,* 39 N.Y.S.2d 416 (2d Dept. 1942). Ordinarily the Commissioner does not address Constitutional issues, but he is free to do so.

It is undisputed that the Board of Education of Rye Neck Union Free School District consists of duly elected officials with authority to establish a curriculum for Rye Neck High School. The New York State Department of Education has approved an optional syllabus for a course comprised of community service. *See Appeal of Anne O'Neill,* Judicial Decision of the Commissioner No. 12,300, at 297. In developing its own curriculum, Defendant Rye Neck Board of Education chose to implement the state syllabus.

Clearly, this Court may grant relief only on a clear showing that *as applied,* the Program violates the Constitutional rights of these Plaintiffs. We are not concerned here with a possible violation of the Constitutional rights of some other student which might be hypothesized. Nor

are we concerned with the wisdom or utility of the Program, which may well seem to some to have Orwellian overtones, or be less useful to the graduates than a foundation course in Latin or English Grammar.

Thirteenth Amendment

Plaintiffs must show infringement of a specific right secured by the Constitution. We consider first, Plaintiffs' claim that the Thirteenth Amendment has been violated. That Amendment provides:

> Neither slavery nor involuntary servitude, except as a punishment for crime whereof the party shall have been duly convicted, shall exist within the United States, or any place subject to their jurisdiction.

U.S. Const. amend. XIII, § 1.

Ratified in 1865, in fulfillment of the Reconstruction goals of the victorious Union, the Thirteenth Amendment had the specific purpose of eliminating African slavery. The Supreme Court has explained that, "the phrase 'involuntary servitude' was intended to extend 'to cover those forms of compulsory labor akin to African slavery which in practical operation would tend to produce like undesirable results.' " *United States v. Kozminski*, 487 U.S. 931, 942 (1988) (*quoting Butler v. Perry*, 240 U.S. 328, 332 (1916)).

In *Pollock v. Williams*, 322 U.S. 4 (1944) and *Bailey v. Alabama*, 219 U.S. 219 (1911), the Supreme Court struck down state peonage laws that subjected debtors to criminal punishment for failing to perform labor to discharge a

debt. In *Kozminski*, the Court held that involuntary servitude was present, warranting prosecution under 18 U.S.C. § 241 and 18 U.S.C. § 1584, when the defendants, not acting under color of any law, forced two mentally retarded men to perform labor on a dairy farm without pay under squalid and highly abusive conditions. This was accomplished through "physical and verbal abuse for failing to do their work." 487 U.S. at 935.

Kozminski represents a high water mark in Thirteenth Amendment jurisprudence. Not all legally compelled service is prohibited by the Thirteenth Amendment.[3] Governments may require involuntary performance without compensation of well-established civic duties. *See Hurtado v. United States*, 410 U.S. 578, 589 n.11 (1973) (jury service); *Selective Draft Law Cases*, 245 U.S. 366, 390 (1918) (military service); *Butler v. Perry*, 240 U.S. 328, 333 (1916) (work on local public roads). The purpose of the Thirteenth Amendment never included interference with the state's power to compel its own citizens to fulfill essential civic obligations. *Butler*, 240 U.S. at 333.

Our Court of Appeals has concluded that a mental institution may compel a lawfully committed mental patient to perform housekeeping chores or other labor as part of a therapeutic program where the assumed benefit to the patient outweighs the incidental burden of the labor requirement, without violating the Thirteenth Amendment. *Jobson v. Henne*, 355 F.2d 129, 131-32 & n.3 (2d Cir. 1966). However, the same Court also has held that involuntary servitude may exist in "some mandatory

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[3] In *Kozminski* the forced labor was not legally compelled.

programs so ruthless in the amount of work demanded, and in the conditions under which the work must be performed, [so as to be] devoid of therapeutic purpose." *Id.* at 132.

It cannot be contended in the instant case that the Program is so ruthless or devoid of educational purposes. The amount of service required, an average of 10 hours per year, and the flexible conditions under which the service can be performed, do not appear to be ruthless. A reasonable educator could conclude that the program teaches a variety of "real world" skills such as cooperation, organization and communication with others. The Rye Neck Board of Education reasonably could conclude that the benefit to the individual student outweighs the incidental burden of the labor requirement.

Furthermore, this case does not involve the type of physical force or legal sanction present in Supreme Court decisions finding involuntary servitude. The Program does not threaten the students with physical pain, imprisonment or fines. Plaintiffs argue that increased usage of community service programs by the state and federal courts as sentencing alternatives for criminals in order to teach basic work skills and job discipline; as well as to punish, has established that community service is an inappropriate aspect of a school curriculum because such service now has become penal in nature or has acquired some aura of shame or disgrace by association. This Court concludes that any such transferred opprobrium has not been shown to exist in the public perception of student community service.

In *Steirer v. Bethlehem Area School Dist.*, 987 F.2d 989 (3d Cir. 1993), the court concluded that a similar mandatory community service program did not constitute involuntary servitude. After considering Supreme Court and Circuit Court decisions, the *Steirer* court adopted a "contextual approach to involuntary servitude by confining the Thirteenth Amendment to those situations that are truly 'akin to African slavery.' " *Id.* at 1000. The court held that "[t]here is no basis in fact or logic which would support analogizing a mandatory community service program in a public high school to slavery." *Id.* This Court accepts that view, but in doing so we rely on the continued existence of the right to petition the local officials for an exemption or limitation of the Program, and the retained right, if Plaintiffs and a majority of their neighbors find the Program too oppressive, to "throw the rascals out" at the next school board election.

Parental Rights under the Fourteenth Amendment

Plaintiffs contend alternatively that the Program interferes with the Constitutional right of parents to direct and control the upbringing and education of their children.[4] Plaintiffs argue that "the decision to help others must always come from one's conscience and through self-motivation." Plaintiffs' Memorandum in

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[4] As admitted in their Memorandum of law, the parents in this case do not object to the Program on religious grounds. Plaintiffs' Memorandum in Opposition to Defendant's Motion for Summary Judgment 9.

Support of Motion for Summary Judgment 23. This statement may be self-evident as a matter of philosophy. But nowhere is it found in the Constitution.[5]

Plaintiff parents allege that they possess a Constitutional right to "have their children opt out of programs that are contrary to the beliefs and values they seek to impart." *Id.* at 22. We find no federal caselaw which recognizes a constitutionally protected parental right for students to opt out of an educational curriculum for purely secular reasons. *Cf. Alfonso v. Fernandez*, 195 A.D. 2d 46, 606 N.Y.S.2D 259 (2d Dept. 1993) (issue of parental control over health care, involving distribution of free condoms in schools), *appeal dismissed without op.*, 83 N.Y.2d 906 (1994). Where the United States Supreme Court has considered the constitutionality of school regulations in light of parental challenges pursuant solely to the Fourteenth Amendment, the relevant inquiry is whether the regulation has a reasonable relation to some end within the competency of the state. For example, in *Meyer v. Nebraska*, 262 U.S. 390 (1923), the Supreme Court struck down a state law which prohibited the teaching of

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[5] According to the Immediatos:

> We have taught our children through both word and example that to do good for others, without being asked or told and without compensation, is its own reward . . . But never have we told our children that they must, or are obligated, to help others. That would defeat all we have tried to impart to them over the years about serving others and consequently destroy any moral value in serving others.

Plaintiffs' Memorandum in Support of Motion for Summary Judgment 23.

German in schools. The Court stated that "the statute as applied is arbitrary and without reasonable relation to any end within the competency of the State." *Id.* at 403. In *Pierce v. Society of Sisters,* 268 U.S. 510 (1925), the Court held unconstitutional a state law requiring all children to attend public schools through high school, and recognized the right of parents to send their children to a nonpublic school. Writing for the Court, Justice McReynolds enunciated the oft-repeated statement: "The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations." *Id.* at 535. The Court found that the state regulation "*unreasonably* interfere[d] with the liberty of parents and guardians to direct the upbringing and education of children under their control" and that such rights "may not be abridged by legislation which has no reasonable relation to some purpose within the competency of the State." *Id.* at 534-35 (emphasis added).

The Court in *Wisconsin v. Yoder,* 406 U.S. 205 (1972), explained that secular claims for exemption from general laws have a different status than religious claims for exemption. The *Yoder* Court noted, "A way of life, however virtuous and admirable, may not be interposed as a barrier to reasonable state regulation of education if it is based on purely secular considerations." *Id.* at 215. Rather, "when the interests of parenthood are combined with a free exercise claim . . . , more than merely a 'reasonable relation to some purpose within the competency of the State' is required to sustain the validity of the State's requirement under the First Amendment." 406 U.S. at 233.

Parents may have "value" based secular objections to many subjects, such as sociology, literature, or biology and will be tempted ultimately to seek intervention by the federal courts to have their children exempted from various classes, exercises, examinations, or activities, in a curriculum established, as in this case, by their duly elected board of education. No public policy will be served by this Court usurping the legitimate authority of school officials to perform their duties in educating citizens; to attempt to do so, because we, or Plaintiffs consider the Program undesirable on purely secular grounds would wreak havoc in the administration of the schools, and involve the federal judiciary impermissibly in matters of local Home Rule.

The issue, therefore, is whether the Program has a reasonable relation to an end within the competency of the state. It is well settled that "a State, having a high responsibility for education of its citizens, [has power] to impose reasonable regulations for the control and duration of basic education." *Yoder,* 406 U.S. at 213. The Supreme Court also has noted the "power of the State to . . . make reasonable regulations for all schools," and "the State's power to prescribe a curriculum for institutions which it supports." *Meyer,* 262 U.S. at 402.

The evidence submitted on these motions shows that the Program is aimed at teaching skills and habits perceived by Defendants as essential for good citizenship. The Program, we are told, "allows students to develop a wide range of personal, intellectual, academic and social skills – such as teamwork, problem-solving, negotiation, communication, planning, and evaluation – that will help them become effective employees, colleagues, citizens,

and leaders." Bradley Aff. ¶ 8; Attached to Amicus Curiae the American Alliance for Rights and Responsibilities' Memorandum in Support of Defendants' Motion for Summary Judgment. If a reasonable person could conclude on the evidence available, or merely by inductive reasoning, that this is really true, and we hold that a reasonable person could so find, then these goals and the Program to effectuate them have a reasonable relation to purposes within the competency of the State. *See Meyer*, 262 U.S. at 403; *Pierce*, 268 U.S. at 535. The appropriate decision-maker of whether to implement a reasonable regulation is not this Court or Plaintiffs. Rather, the Home Rule issue is entrusted by the Constitution and the caselaw to the duly elected trustees of the local boards of education. Their decision can and should be informed by the views of the state Commissioner, supportive in this case, and the wishes of their as yet silent electorate. Plaintiff parents may not use this Court to interpose their own way of life or their own philosophy, however laudable, as a barrier to reasonable state and local regulation of the educational curriculum.

Student Rights under the Fourteenth Amendment

Plaintiffs contend that the students' rights under the Fourteenth Amendment are violated because the Program requires the students to disclose where they performed charitable service, the type of work they did for the organization, and what whey gained from the service.[6]

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[6] Plaintiffs do not claim that the Program violates their First Amendment rights to freedom of speech.

Plaintiffs argue that "a student must either reveal the types of service and organizations he believes are worthy, or must cloak his true moral judgments as to which causes and organizations are worth his time and labor by choosing those that the government and his classmates will view as acceptable." Plaintiffs' Memorandum in Opposition to Defendants' Motion for Summary Judgment 13.[7]

This assertion is contradicted at least in part by the wide range of available agencies or organizations for which students may choose to perform service, many of which are neutral, as well as the student's right to propose alternative or additional agencies or organizations. No political, religious or moral association is implied by most of the approved services, which include American Red Cross, Blythedale Children's Hospital, Cafeteria/ Hall Assistant, Custodial Assistance, Emergency Medical Services, Home for the Aged of New Rochelle, Mamaroneck Community Nursery School, F<E<Bellows Pizza Day Help, March of Dimes Birth Defects Foundation, New Orchestra of Westchester, New Rochelle Hospital Medical Center, OPUS – Organization of People Undaunted by Stroke, Port Chester Nursing Home, Sunnydale Senior Citizen Home, Tutoring, United Hospital, Volunteers in Archives, West. Lighthouse for the Blind,

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[7] If on occasion a high school student must cloak his or her true moral judgments by expressing in class views which are insincere but politically correct and likely to gain favor with the teacher, it would indeed be regrettable but not actionable under the Fourteenth Amendment.

Westchester County Medical Center, Westchester Developmental Disabilities Service Office. *See* "A Sampling of Community Service Options," Ex. C-2 to Joint Statement of Material Facts. A student may perform all forty hours of service for "neutral" agencies and organizations. Under these circumstances, the limited information to be disclosed in the questionnaire/form and class discussions would not seem to force students to reveal or suppress moral judgments. *See Shelton v. Tucker*, 364 U.S. 479 (1960) (prohibiting disclosure of every organization to which teacher belonged or regularly contributed within five years as scope of inquiry was completely unlimited). Elective choices a student makes, such as choosing one foreign language over another, or selecting a project, book or subject for a paper, often may involve indicia of personal preference or opinion. This does not implicate a privacy interest worthy of Constitutional protection. This Program as administered does not seem in practical reality to require students to reveal information or beliefs protected by the Fourteenth Amendment.

Abstention

Defendants urge *Burford* abstention.[8] However, in order to determine the constitutionality of the Program, this Court need not analyze any disputed issues of state law. There are no factual determinations of state agencies or courts at issue. *See Alliance of American Insurers v. Cuomo*, 854 F.2d 591, 601 (2d Cir. 1988) (*Burford* abstention held inappropriate). That state courts are also capable of

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[8] *Burford v. Sun Oil Company*, 319 U.S. 315 (1943).

deciding the constitutional issues raised does not, in and of itself, require this Court to abstain from deciding the issues in this case. Accordingly, *Burford* abstention is inappropriate.

For the foregoing reasons, the motion for summary judgment in Defendants' favor is granted and Plaintiffs' motion is denied. Settle a final declaratory judgment on notice or waiver of notice.

SO ORDERED.

DATED: White Plains, New York
January 19, 1994

CHARLES L. BRIEANT
Charles L. Brieant, U.S.D.J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL IMMEDIATO, *et al.*, Plaintiffs, v. RYE NECK SCHOOL DISTRICT, *et al.*, Defendants.	AFFIDAVIT OF EUGENE AND DIANE IMMEDIATO 94 Civ. 2831 (CLB)

Eugene and Diane Immediato, being duly sworn, depose and say:

1. We are plaintiffs in this action and make this affidavit based upon our personal knowledge of the facts herein set forth.

2. We are the parents of Daniel Immediato, also a plaintiff in this action, and a student at Rye Neck High School.

3. As parents, we have a clear sense of how we wish to raise our children. During their entire lives, we have tried to teach our children good values and provide them with the knowledge we feel necessary for them to realize their full potential as happy, successful individuals. It is a responsibility we take very seriously, and have done so since their birth.

4. We have taught our children, through both word and example, that to do good for others, without being asked or told and without compensation, is its own

reward. Many times, our children have seen us lend a hand to others and have eagerly assisted when it was appropriate. But never have we told our children that they must, or are obligated, to help others. That would defeat all we have tried to impart to them over the years and rob service of any meaning or worth.

5. We believe our son Daniel has taken these lessons to heart. To help his parents financially, he has gone for training after school and is now a completely certified lifeguard. As a lifeguard, he works after school and over the summers and ultimately bears enormous responsibility for the safety of others.

6. When Rye Neck first started requiring kids to do community service, our children, including Daniel, came to us and asked if the school district could force them to do this. Our response was that unless you are a criminal or been drafted into the military, no one can be forced by the government in this country to serve others. As we and our children were soon to find out, however, Rye Neck School District sent the exact opposite message to our children. By imposing service requirements, Rye Neck was in effect telling our children that they can be forced to serve others against what we as parents have told them or they will not get a high school diploma.

7. To us, mandatory community service is a real threat to our parental authority, mainly because it's primary motivation is based upon power and control. We believe that school officials are expanding their control over our son into an area in which they have no authority to do so, all under the guise of education. We feel this expansion of power is to the detriment of our son, our

parental authority, and the important values we try to teach him.

8. We believe the primary responsibility for our son's moral education lies with us. We send our children to the public school mainly to teach them how to read and write. School officials have told us that all students at Rye Neck must learn how to give something back to the community. We believe that it is not up to the government or the public schools to determine what our children owe to the community. That is a decision we will make within the family.

9. We have always taught our children that the desire to help others must come from within. People must make the choice for themselves whether or not to serve others. We firmly believe that our son's forced participation in this program will not teach him the value of helping others. We've already taught him that. Rather, the greatest lesson received will be that the government can force you to do something we always taught him was left up to his own choice. We believe that lesson is extremely destructive of our authority as parents. The inevitable consequence of our son's forced participation in the program is that he will look to the government, as opposed to his parents, for guidance on matters of individual choice and morality.

10. We are a family of modest means and as such we cannot afford to send our children to private schools. The only way our son will receive a high school diploma is if he stays at Rye Neck. But Rye Neck School District will only give him a diploma if he performs the mandatory community service we so strenuously object to. We

believe that to be a violation of our authority as parents and of the U.S. Constitution. That is why we decided to fight this program in court.

FURTHER AFFIANTS SAITH NOT.

/s/ Eugene Immediato
Eugene Immediato

/s/ Diane Immediato
Diane Immediato

Subscribed and sworn to before me
this 14th day of October, 1994.

/s/ Jill M. Keogh
Notary Public, State of New York

JILL M. KEOGH
Notary Public, State of New York
No. 4040956
Qualified in Westchester County
Commission Expires August 31, 1995

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

DANIEL IMMEDIATO, *et al.*, Plaintiffs, v. RYE NECK SCHOOL DISTRICT, *et al.*, Defendants.	94 Civ. 2831 (CLB)

JOINT STATEMENT OF MATERIAL FACTS

The parties submit the following stipulation of material facts relevant to the resolution of their motions for summary judgment:

1. Defendant Rye Neck School District is a union free school district pursuant to § 1701 of New York State Education Law. Its high school, located in Mamaroneck, New York, has a current enrollment of 278 students, grades 9-12.

2. In 1990, defendant Rye Neck School District and the Board of Education then holding elective office determined that students in grades 9 through 12, commencing with the class to graduate in June 1992, would be required to complete 40 hours of community service during the four high school years as a requirement of graduation.

3. Failure to complete the program as specified makes a student ineligible for graduation. The program

makes no provision for students and their parents who object to mandatory community service to opt out of the program.

4. The 40 hours of service may be provided to not-for-profit corporations, charities, political organizations or public agencies. Twenty hours of the required 40 hours can be provided to defendant School District or to younger students within the District during the school day. A minimum of twenty hours of service must be performed outside the high school.

5. Students may not receive pay for their services nor may their services displace activities performed by paid employees in accordance with the New York Syllabus on "Community Service/Internship Model."

6. Many local not-for-profit organizations and charitable organizations have requested service of the students through announcements made by the community service coordinator at the school and through the placement of bulletins from organizations requesting such services.

7. A student may suggest organizations or agencies for which to perform their service which have not requested such services or which have not been suggested by the Rye Neck School District administration but such service must be pre-approved by the school coordinators of the program to gain credit toward completion of the service requirement.

8. The organization or agency for which the student performs the work must document the hours worked by the student and the student must turn over these verified

time sheets to the school. A copy of this form is attached as Exhibit A.

9. Students may perform the 40 hours of community service at any time during the four high school years including over the summers of such years. Students set their own work schedule and provide their own transportation for work performed outside defendant Rye Neck School District.

10. Organizations and agencies in which students perform service are responsible for providing any training or necessary supervision. The School District coordinators of the program are responsible for communication with the organizations or agencies in which students are performing community service.

11. As part of the required senior year course, "Managing Your Future," the students must complete a form documenting and summarizing their community service (where and when they performed the service and the type of work they did) and setting forth what they gained from this service. A copy of this form is attached as Exhibit B. The form does not ask the student to state why he or she selected the particular community service or whether or not he or she is in agreement with the aims of the particular organization or agency.

12. As a part of the required senior year course, "Managing Your Future," students discuss with the teacher and their fellow students where they performed their service, the type of work they did, and what they gained from their experience. Students are not required to discuss why he or she selected the particular community

service or whether or not he or she is in agreement with the aims of the particular organization or agency.

13. In June proceeding their senior year, students are provided with a letter setting forth the requirements of the community service program and the Managing Your Future course. Exhibit C is a copy of such letter.

14. Enclosed with the letter is a series of questions and answers regarding the community service program. A copy of this document is attached as Exhibit C1.

15. Also enclosed with the letter is a sample listing of community service options. A copy is attached as Exhibit C2.

16. Also enclosed with the letter is a statement of the grading policy of the community service program. A copy is attached as Exhibit C3.

17. Plaintiff Daniel Immediato is currently a student at Rye Neck High School and subject to the mandatory community service requirement as a condition of graduation.

18. Mario Gironda, Jr. and his parents, Mario and Sandra Gironda, originally joined in the instant case. Due to personal reasons, Mario Gironda, Jr., has decided to withdraw from the suit. Therefore, his parents also withdraw as plaintiffs. This withdrawal does not affect nor prejudice the status of the suit. However, any remedy granted by the court would not apply to Mario Gironda, Jr.

19. Plaintiff student states that he does not object to charity, but believes that charitable activities and community service work must be voluntary and left to an individual's conscience. He objects to required participation in defendants' mandatory community service program.

20. Plaintiff student also desires to keep information concerning any service activities he may perform private.

21. Plaintiff parents state that they support private, charitable efforts and voluntary service to the community, but fundamentally believe that the decision to help others must always come from one's own conscience and that it cannot be imposed by the government. They attempt to impart these values to their children. As a result, they object to their childrens' participation in defendants' mandatory community service program.

22. Defendants state that the educational interests or purposes of the mandatory community service program include having students learn about the community and the needs of the community, to learn what services are necessary to meet the needs of the community and its citizens, to meet people and see what they do and, if possible, to become involved in internships with government officials and agencies. The community service program, as incorporated into the course "Managing Your Future," is further intended as a bridge between school and work or school and college, to give students an opportunity to look at possible careers.

23. Student responses and answers to the question "What Did You Gain From Community Service?" are attached here as exhibit D.

Respectfully submitted,

/s/ Phyllis S. Jaffe
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(PJ-7584)
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RYE NECK HIGH SCHOOL

1992-1993

COMMUNITY SERVICE HOURS

STUDENT NAME: _____

DATE	HOURS	PLACE	TYPE OF SERVICE
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	

(PLEASE USE SECOND SHEET IF MORE ROOM IS NEEDED)

ADVISOR SIGNATURE (PRE-APPROVAL) _____

STUDENT SIGNATURE _____

ADVISOR SIGNATURE (ON COMPLETION) _____

CONTACT _____

TELEPHONE _____

COMMENTS _____

Mr. Sgroi Managing Your Future

NAME _____

SUMMARIZE YOUR COMMUNITY SERVICE (Where, when, what did you do)

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

What DID YOU GAIN FROM THIS SERVICE

_____
_____
_____
_____
_____
_____
_____
_____
_____

ANY CAREER CONNECTION

_____
_____
_____
_____

FURTHER COMMENTS

_____

(LOGO) RYE NECK UNION FREE SCHOOL DISTRICT
(914) 698-6171 FAX: (914) 698-8519

Rye Neck High School
300 Hornidge Road
Mamaroneck, NY 10543

Peter J. Mustich
Superintendent of Schools

Dr. Barbara Ferraro, Principal

June, 1993

Dear 1993-1994 Seniors:

Congratulations upon entering your senior year. As seniors, you will be taking some additional responsibilities and one of these is to participate in the Rye Neck Community Service Program which is a requirement for graduation.

You may wish to begin fulfilling the 40 hours of community service requirement over the summer. To do this properly and receive credit you must register with Mrs. Dammacco or Mr. Sgroi, *prior to beginning your community service.* We will need the name of the place where you are volunteering, the number of hours you are planning to contribute and the name and telephone number of your supervisor.

Community service must include a minimum of 20 hours outside Rye Neck High School.

Managing Your Future, is a 10-week course which must be given to all seniors participating in the Community Service Program. The State Education Department will not accredit the service program unless such a course is given and attended in 1993-1994.

The deadline for the completion of your community service requirement is May 1, 1994. We seek to recognize the valuable contribution you make to the school community.

If you would like to contribute to your community hours during the summer, we have enclosed a list of possible sites. Also enclosed is the Pass/Fail grading policy for community service; as well as some frequently asked questions and answers. If you have any ideas, suggestions, or questions, please feel free to see either Mr. Sgroi or Mrs. Dammacco.

Sincerely,

/s/ Adrienne Dammacco
Mrs. Adrienne Dammacco
Community Service
Coordinator

/s/ Peter Sgroi
Mr. Peter Sgroi
Community Service
Coordinator

"Excellence in Education"

RYE NECK HIGH SCHOOL
COMMUNITY SERVICE PROGRAM

1. Why must I perform service?

   To respond affirmatively and actively to the need for community service.

   To make a positive difference in the lives of people in need.

To contribute back to a larger community that has served you.

To learn about yourself and to develop a sense of responsibility.

To fulfill a graduation requirement of Rye Neck High School.

2. How much service must I do?

A minimum of forty (40) hours. Be aware that although the Service Program requires only 40 hours, certain agencies require more hours. In those cases, you are required to fulfill the agency's requirements.

3. What counts as service?

The direct provision of a basic human service to a person or people in need without remuneration. A minimum of half of your service must be performed outside of school.

You may work *with people in need – people who are poor, homeless, handicapped, or in need of education supevision* [sic], *or companionship. Activities such as clerical work, aiding, coaching a sport who* [sic] *not qualify.*

4. Who arranges my service project?

You arrange your own project. Projects must be approved by the Service Coordinators. Attached is a lsit [sic] of approved agencies. If there is an agency that you would to [sic] volunteer for that is not on tis [sic] list, speak to your service coordinator about it. Specific procedures and forms will be explained at the beginning of the 1992-1993 school year.

5. When may I begin to accumulate service hours?

   You must start your project by October 1 of your senior year. Community Service projects may begin the summer before senior year under two conditions. First, the project must be approved in advance by the Service Cordinators. No projects will be approved retroactively.

6. When must the project be completed?

   Service projects must be completed by April 1 of senior year. A request for an extension must be submitted in writing to the Service Office before April 1.

7. How important is the Service Course?

   The Service Course is seen as an integral part of a RNHS education.

8. Where can I get further information about the Community Service Program.

   Mr. Sgroi or Mrs. Dammacco are available to help you during school hours.

A Sampling of
COMMUNITY SERVICE OPTIONS

Aids Related Community Services
Volunteers in Archives
Tutoring:
- F.E. Bellows
- Rye Neck High School
- Rye Neck Middle School
- Special Education
- BOCES

Planned Parenthood
Burke Rehabilitation
West, Lighthouse for the Blind
United Hospital
Westchester County Medical Center
United Hebrew Geriatric Center
Westchester Developmental Disabilities Service Office
Blythedale Children's Hospital
Cafeteria/Hall Assistant
Home for the Aged of New Rochelle
REEF
Sunnydale Senior Citizen Home
Jewish Child Care Association
Emergency Medical Services
March of Dimes Birth Defects Foundation
New Rochelle Hospital Medical Center
OPUS – Organization of People Undaunted by Stroke
Food Pantry (Village of Mamaroneck)
Mamaroneck Community Nursery School
Port Chester Nursing Home
American Red Cross
Custodial Assistance
F<E< Bellows Pizza Day Help
First Baptist Church Child Care Center
Key Club (specific functions to be discussed)
KEEPS – St. Vito's After School Program
People Together (Helping Homeless)
Congressional Aid
New Orchestra of Westchester
Rye Nature Center

1993 – 1994
COMMUNITY SERVICE
GRADING POLICY

In order to fulfill your community service requirement you must document and verify the minimum of 40 service hours. The community service plan you wish to follow may be designed by you or your advisor, however, *you must get prior approval by your advisor before starting your service.*

Service hours must be documented on the proper form which is available from Mrs. Dammacco or Mr. Sgroi. Service work may not be for traditional academic credit or pay, and in some way must be shown to service the community. Service must be preformed in conjunction with a not-for-profit organization.

SCORING

FIRST QUARTER GRADE: If the student has made a commitment and gotten approval of a specific service and has preformed [sic] and had documented at least 10 hours of the service that student will receive a P (PASS) for the quarter.

If the student has not done the above an INCOMPLETE will be given.

SECOND QUARTER GRADE: A commitment as well as preapproval and a *minimum of at least half (20 hours)* of community service completed will give the student *a P (PASS)* for the quarter.

A commitment but *less than half of the requirement* will result in an *INCOMPLETE.*

No commitment and/or less than 10 hours of completed service will result in a *FAILURE* for the second quarter.

THIRD QUARTER GRADE: A commitment *as well as completion of 40* hours with prior approval will receive a *PASS*.

A commitment with more than 20 hours but less than completion will receive an INCOMPLETE.

No commitment and/or *less than 20 hours* will result in *FAILURE* for the third quarter.

FOURTH QUARTER GRADE: *Completion of all community service hours is expected by May 1, 1994.* If at this time a student has not completed his/her commitment, the Principal as well as the student's parents will be notified that the student's graduation is in jeopardy.

* * *

INTERROGATORY 11

11. Describe in detail the mandatory community service program's requirement stated in paragraph 9 of the Answer that student service activities may not replace work for which payment is made, including explanation of how, why, and by whom this requirement was developed.

RESPONSE:

11. The requirement that student service activities may not replace work for which payment is made is set forth in the syllabus of the New York State Education Department.

INTERROGATORY 12

12. (a) Describe in detail the standards and procedures that govern whether service performed for religiously-affiliated institutions or organizations is eligible for credit under the mandatory community service program.

(b) If any religiously-affiliated activities have been accepted or rejected under the mandatory community service program, identify the institution, organization, and type of service activity accepted or rejected.

RESPONSE:

12.(a) Service performed for religiously-affiliated institutions or organizations is approved when the activity involves, for example, clothing drives and food drives including students making sandwiches for the midnight

run to New York City to provide food to homeless persons. Service such as proselytizing on the street or door to door in favor of a particular religion would not be approved.

(b) A student who was a member of Jehovah's Witnesses asked to receive credit for proselytizing, which was denied. He later received credit for participating in the midnight run to New York City.

INTERROGATORY 13

13. (a) Identify all organizations and agencies that have requested service of students as stated in paragraph 9 of the Answer.

(b) If any organizations or agencies that have requested service of students have been denied such service, identify those organizations or agencies and state in detail the basis for denial of student service to those groups.

RESPONSE:

13.(a) Organizations and agencies that have requested service include the United Hospital of Port Chester, the Village of Mamaroneck, the Sara Newman Nursing Home, the Greenburgh Nature Center and the Multiple Sclerosis Society. In addition, see documents produced under Plaintiffs' First Set of Requests for Production of Documents.

(b) No organizations or agencies that have requested service of students have been denied such service in the memory of staff members.

INTERROGATORY 14

14. (a) State whether suggestions are made to students about what service activities are available or appropriate under the mandatory community service program.

* * *

program was adopted were Beatrice Cerasoli, Miles Federman, Kathleen Gulotta, Robert Reich, Francis Spedafino, Stewart Sterk.

Dated: White Plains, New York
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/s/ Phyllis S. Jaffe
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LOGO

March 20, 1996

COVER STORY

Growing debate centers on who teaches values

By Tamara Henry
USA TODAY

Eugene Immediato is a Ward Cleaver sort of guy who wants to be the sole role model for his sons. So when the Rye Neck school district in Mamaroneck, N.Y., required community service for his son Daniel to graduate, he took educators to court.

Waymon Earls, a burly wrecker driver from Toccoa, Ga., charges the Stephens County School District has "stolen my little girls" because his two daughters, ages 13 and 14 at the time, were secretly given HIV tests, pap smears, birth control pills and condoms in the school clinic after talking with a counselor. Earls and his wife, Sharon, are dismayed that such things could be done to their children "without their consent, or notice or anything," says attorney E.W. "Chip" Angell, who filed suit on the family's behalf last June.

Hot-button issues

Here are some of the issues that pit parents against schools:

- Sex education, abstinence, homosexuality and AIDS prevention.
- Distribution of condoms and birth control pills.
- Whether prayers can be allowed in schools and at school functions.
- Alcohol and drug education.
- Death education, including abortion, euthanasia, suicide, violence.
- Content of textbooks, audio-visual materials.
- Witchcraft.
- Dress codes, like uniforms and boys' earrings.
- Community service.
- Multiculturalism.
- Roles of males and females, divorce.

The two fathers are among a growing number of parents challenging schools, government and other bureaucracies that seek to dictate values, distribute condoms, impose sex and AIDS education and restrict religious talk. "Parental rights" is a new rallying cry, especially among conservatives, homeschoolers and religious right activists.

COVER STORY *(continued)*

Educators: Parents want it both ways

"There's just a massive movement in this country for parents to take back the schools," Sen. Charles Grassley, R-Iowa, told USA TODAY. "They're beginning to ask questions. They're finding bureaucratic hoops to go through. They're finding stonewalling on the part of educators, even at the local level, to get some basic information. They can't believe it. It's a frustration."

Mary G. Jarvis, principal of Smoky Hill High School, Cherry Creek, Colo., describes this generation of parents as "vigilante consumers" who burned flags, marched in Selma, Ala., and violently protested the Vietnam War. "Those are now our parents. Don't you think they might have a little different attitude about things and want their rights?"

Grassley and Rep. Steve Largent, R-Okla., have introduced long-shot bills addressing parents' rights to direct their children's education, health care, religious training and discipline. Grassley is more optimistic about the Family Privacy Protection Act, which passed the U.S. House in April.

This bill would broaden the scope of parental consent to include questionnaires given to minors in programs or activities "funded in whole or in part by the federal government." The House bill is now before a Senate committee.

The National PTA, in a letter-writing campaign to members of Congress launched this month, describes the bill as "excessive and unnecessary."

Michael D. Simpson of the National Education Association, the nation's largest teachers' union, says the legislation means locally elected school officials would no longer have the authority to make decisions on school curricula and educational policy. He says parents would have the right to sue teachers in federal court for money damages and attorneys' fees if the teacher says anything in class that the parent doesn't like. He also says students would have the right to carry knives, guns and other weapons to school; he points to a U.S. Court of Appeals ruling in California that allows children to carry 7-inch knives with them to school because of their Sikh religion.

Still, Angell, who says movement on his lawsuit has been slow, asks: "How would you feel if some (school officials) tell you, 'it is none of your damn business' . . . and give your daughters a bag of condoms?

"The government has gotten too intrusive and too Big Brother. We don't need any more government in our families."

Immediato agrees. "What Daniel gives back to the community really should be my concern. (The school) wants to take over the responsibility of teaching my child the goodness that comes from giving of oneself. I want to do that myself. That's a parent's job."

Some school officials would argue that parents have come to expect schools to take more, not less, responsibility for their kids. Parents can't expect to have it both ways.

Principal Jeanne Friedman at Ojus Elementary School in Miami Beach spends hours of her day telephoning

homes to locate absent students. She says some parents leave their children at school hours before doors open or pick them up long after closing.

"You want to know the Jeanne Friedman pet peeve? It's not being able to contact anyone for that child. To me, that's a cardinal sin."

Phyllis Schlafly of the conservative Eagle Forum of Alton, Ill., says, "Schools were set up to teach children to read and write. That's what they ought to concentrate on. Just because some parents fall down on the job doesn't mean the school can administer . . . therapy to other children."

"Who decides what's in the best interest of children? Is it going to be the children's parents, or is it going to be the government?" asks Greg D. Erken of the parental rights advocacy group Of the People.

Instead of taking a kinder, gentler approach – "seeking redress through limited statutes" – Erken says, "We need to take, frankly, a blunt 2-by-4 to the judiciary and bureaucracies of the school system to remind them that the parents are sovereign as citizens, particularly over their own children."

Grassley admits a federal law would be unnecessary if states act. Of the People already has legislators in 28 states sponsoring a Parental Rights Amendment to state constitutions.

Erken admits it can take years to pass a constitutional amendment. Most states require approval from both houses of the legislature; then voters need to ratify the

amendment. He says some states, like Michigan, allow action in a year.

In Colorado, the group is pursuing an initiative route, planning a campaign to get 55,000 signatures for it to appear on the November ballot. But first a court challenge must be resolved.

Parental rights are not guaranteed by the Constitution, says Dwight G. Duncan, Southern New England School of Law. "The courts seem to give the parental rights language (in key cases) lip service and really don't put any teeth into it. It's being . . . gummed to death."

In the Immediato case, the Second U.S. Circuit Court of Appeals upheld the Rye Neck school district's requirement that students complete 40 hours of community service to get a diploma, ruling the practice educational, not exploitative. Immediato and his attorneys are discussing an appeal.

Daniel Immediato, now 19, completed his senior year without complying with the requirement. He left school without a diploma.